

M I N U T E S
O F T H E
P R O C E E D I N G S
A T A
C O U R T - M A R T I A L,

Assembled for the TRIAL of the Honourable

Admiral *AUGUSTUS KEPPEL*,

ON A CHARGE

Exhibited against him by Vice-Admiral Sir HUGH PALLISER, Baronet.

A S T A K E N B Y

GEORGE JACKSON, Esq;

Judge-Advocate of his Majesty's Fleet.

Published by ORDER of

The Right Honourable the Lords Commissioners of the Admiralty.

W I T H A N

A P P E N D I X,

C O N T A I N I N G

All the LETTERS and PAPERS that have any Relation to the TRIAL.

L O N D O N:

Printed for W. STRAHAN; and T. CADELL, in the Strand.

MDCCLXXIX.

[Price Six Shillings.]

M I N U T E S
OF THE
PROCEEDINGS

OF THE
COUNCIL-MARTIAL

IN THE
CASE OF



GEORGE
AND

IN THE
CASE OF

AND

CONTAINING

ALL THE EVIDENCE AND FACTS RELATIVE TO THE CASE

LONDON:

Printed for W. STRAUGH; and T. GARDNER, in the Strand.

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MINUTES OF THE PROCEEDINGS
AT A
COURT-MARTIAL,

Assembled on board His MAJESTY'S Ship BRITANNIA, in *Portsmouth*-
Harbour, the 7th Day of *January*, 1779,

For the TRIAL of the Honourable

Admiral *AUGUSTUS KEPPEL*,

ON A CHARGE

Exhibited against him by Vice-Admiral Sir HUGH PALLISER, Baronet.

P R E S I D E N T,

Sir Thomas Pye, Admiral of the White.

P R E S E N T,

Matthew Buckle, Esq; } Vice-Admirals of the Red.
John Montagu, Esq; }

Mariot Arbuthnot, Esq; } Rear-Admirals of the White.
Robert Roddam, Esq; }

Captain *Mark Milbanke*,

Captain *Francis Samuel Drake*,

Taylor Penny,

John Moutray,

William Bennett,

Adam Duncan,

Philip Boteler,

James Cranston.

THE Prisoner brought in by the Deputy Marshal, and Audience admitted.

The Order for the Trial, dated 31st *December* 1778, and directed to *Sir Thomas Pye*, Admiral of the White, and Commander in Chief of His Majesty's Ships at *Portsmouth* and *Spithead*, was read, and is as follows:

By the Commissioners for executing the Office of Lord High-Admiral of Great-Britain, Ireland, &c.

WHEREAS *Sir Hugh Palliser*, Vice-Admiral of the Blue Squadron of His Majesty's Fleet, did, by his Letter to our Secretary, dated the 9th Instant, desire we would order a Court-Martial to be held for the Trial of the Honourable *Augustus Keppel*, Admiral of the said Squadron, for Misconduct and Neglect of Duty on the 27th and 28th of *July* last, in sundry Instances, as mentioned in a Paper which accompanied that Letter, containing his the said Vice-Admiral's Charge against the said Admiral: And whereas we have thought fit, that a Court-Martial shall be assembled for that Purpose on *Thursday* the 7th Day of next Month, provided the Witnesses on the Part of the Accused and the Accuser shall be ready; we send you herewith *Sir Hugh Palliser's* said Letter, together with the Paper containing the Charge therein referred to, and do hereby require and direct you to assemble a Court-Martial on board such one of his Majesty's Ships at *Portsmouth* and *Spithead*, as you shall judge proper, on *Thursday* the 7th Day of next Month (or, if the Witnesses aforesaid shall not then be ready, as soon afterwards as they shall be so), to enquire into what is set forth, in the said Charge, against the said Admiral the Honourable *Augustus Keppel*, and to try him for his Conduct and Behaviour therein mentioned accordingly.

B

And

And whereas, by an Act passed this present Session of Parliament, entitled "An Act to authorise the Lord High-Admiral, or the Commissioners for executing the Office of Lord High-Admiral, for the Time being, to order any Court-Martial, which may be appointed on the Charge of Vice-Admiral Sir *Hugh Palliser*, against the Honourable Admiral *Keppel*, to be holden on Shore," Power is given to us, to order, that after such Court-Martial shall have been duly assembled and constituted, and the Members thereof and the Judge Advocate duly sworn, according to the Laws now in being, the said Court shall be adjourned to, and holden in, such convenient Place on Shore, as to us shall seem necessary or expedient: You are therefore hereby further required and directed, so soon as such Court-Martial shall have been duly assembled and constituted, and the Members thereof and the Judge Advocate duly sworn, according to the Laws now in being, to adjourn the said Court-Martial to the House of the Governor of His Majesty's Garrison at *Portsmouth* (which, with his Majesty's Permission, we have ordered to be prepared for the Holding of such Court, and for Accommodation of the Members thereof), and there to proceed in the abovementioned Enquiry and Trial, until the same shall be ended; taking care that the Act abovementioned (a printed Copy of which is herewith inclosed) be in all Respects whatsoever complied with. Given under our Hands, Dated at the Admiralty Office, the 31st December 1778.

Sir Thomas Pye, &c. &c.
Portsmouth and Spithead.

By Command of their Lordships,
Phil. Stephens.

Sandwich,
J. Buller,
Lisburne.

Then the Members of the Court and the Judge Advocate were severally sworn, agreeably to Act of Parliament.

The Court having been duly assembled and constituted, and the Members thereof and Judge Advocate duly sworn, adjourned, being a Quarter after Eleven o'Clock, to the House of the Governor of His Majesty's Garrison at *Portsmouth*, agreeable to Directions contained in the Order aforementioned.

The Court met, being a Quarter past Twelve o'Clock, at the Governor's House of His Majesty's Garrison at *Portsmouth*, according to Adjournment.

The Prisoner was brought into Court, and Audience admitted.

The Letter from Sir *Hugh Palliser*, inclosing the Charge, also the Charge, were then read, and are as follow:

SIR,

London, 9th December 1778.

I DESIRE you will please to move the Lords Commissioners of the Admiralty to order a Court-Martial to be held for the Trial of the Honourable *Augustus Keppel*, Admiral of the Blue, for Misconduct and Neglect of Duty on the 27th and 28th of July last, in sundry Instances, as mentioned in the inclosed Paper containing my Charges against him.

I am, SIR,

Your most obedient humble Servant,

Philip Stephens, Esq;

Hugh Palliser.

A Charge of Misconduct and Neglect of Duty, against the Honourable Admiral Keppel, on the 27th and 28th of July 1778, in divers Instances, as undermentioned:

- I. **T**HAT on the Morning of the 27th of July 1778, having a Fleet of Thirty Ships of the Line under his Command, and being then in the Presence of a French Fleet of the like Number of Ships of the Line, the said Admiral did not make the necessary Preparation for Fight, did not put his Fleet into a Line of Battle, or into any Order proper either for receiving or attacking an Enemy of such Force; but, on the contrary, although his Fleet was already dispersed and in Disorder, he, by making the Signal for several Ships of the Vice-Admiral of the Blue Division to chase to windward, encreased the Disorder of that Part of his Fleet, and the Ships were in consequence more scattered than they had been before; and whilst in this Disorder, he advanced to the Enemy, and made the Signal for Battle: That the above Conduct was the more unaccountable, as the Enemy's Fleet was not then in Disorder, nor beaten, nor flying, but formed in a regular Line of Battle on that Tack which approached the *British* Fleet, all their Motions plainly indicating a Design to give Battle, and they edged down and attacked it whilst in Disorder. By this unofficer-like Conduct a general Engagement was not brought on, but the other Flag Officers and Captains were left to engage without Order or Regularity, from which great Confusion ensued: Some of his Ships were prevented getting into Action at all, others were not near enough to the Enemy, and some from the Confusion fired into others of the King's Ships, and did them



them considerable Damage : And the Vice-Admiral of the Blue was left alone to engage, singly and unsupported : In these Instances the said Admiral *Keppel* negligently performed the Duty imposed on him.

II. That after the Van and Center Divisions of the *British* Fleet passed the Rear of the Enemy, the Admiral did not immediately tack and double upon the Enemy with these Two Divisions, and continue the Battle ; nor did he collect them together at that Time, and keep so near the Enemy to renew the Battle as soon as it might be proper : On the contrary, he stood away beyond the Enemy to a great Distance before he wore to stand towards them again, leaving the Vice-Admiral of the Blue engaged with the Enemy, and exposed to be cut off.

III. That after the Vice-Admiral of the Blue had passed the last of the Enemy's Ships, and immediately wore, and laid his own Ship's Head towards the Enemy again, being then in their Wake, and at a little Distance only, and expecting the Admiral to advance with all the Ships to renew the Fight, the Admiral did not advance for that Purpose, but shortened Sail, hawled down the Signal for Battle ; nor did he at that Time, or at any other Time whilst standing towards the Enemy, call the Ships together, in order to renew the Attack, as he might have done, particularly the Vice-Admiral of the Red and his Division, which had received the least Damage, had been the longest out of Action, were ready and fit to renew it, were then to windward, and could have bore down and fetched any Part of the *French* Fleet, if the Signal for Battle had not been hawled down, or if the said Admiral *Keppel* had availed himself of the Signal appointed by the Thirty-first Article of the Fighting Instructions, by which he might have ordered those to lead who are to lead with the Starboard Tacks on board, by a Wind, which Signal was applicable to the Occasion for renewing the Engagement with Advantage, after the *French* Fleet had been beaten, their Line broken, and in Disorder. In these Instances he did not do the utmost in his Power to take, sink, burn, or destroy the *French* Fleet that had attacked the *British* Fleet.

IV. That instead of advancing to renew the Engagement as in the preceding Articles is alleged, and as he might and ought to have done, the Admiral wore and made Sail directly from the Enemy, and thus he led the whole *British* Fleet away from them, which gave them the Opportunity to rally unmolested, and to form again into a Line of Battle, and to stand after the *British* Fleet. This was disgraceful to the *British* Flag, for it had the Appearance of a Flight, and gave the *French* Admiral a Pretence to claim the Victory, and to publish to the World, that the *British* Fleet ran away, and that he pursued it with the Fleet of *France*, and offered it Battle.

V. That in the Morning of the 28th of *July* 1778, when it was perceived that only Three of the *French* Fleet remained near the *British*, in the Situation the whole had been in the Night before, and that the rest were to leeward at a greater Distance, not in a Line of Battle, but in a Heap ; the Admiral did not cause the Fleet to pursue the flying Enemy, nor even to chase the Three Ships that fled after the rest ; but, on the contrary, he led the *British* Fleet another Way directly from the Enemy. By these Instances of Misconduct and Neglect, a glorious Opportunity was lost of doing a most essential Service to the State, and the Honour of the *British* Navy was tarnished.

H. Palliser.

The Court agreed to postpone further Proceedings till Tomorrow Morning.
Adjourned accordingly till Tomorrow Morning at Ten o'Clock.

S E C O N D D A Y .

FRIDAY, the 8th of JANUARY, 1779.

THE Court met according to Adjournment.

The Prisoner having Yesterday desired, that all Masters, who are summoned to give Evidence, may be ordered immediately to deliver in their Log-Books to lay on the Table; And,

The Prosecutor having requested, saying, he thought it would be more regular, that each Master when called in as a Witness, may then produce his Log-Book, to be laid on the Table for further Perusal;

The Court, before the Doors were opened, took the Matter into Consideration, and agreed that the Prisoner's Request be complied with.

The Court was then opened, the Prisoner brought in, and Audience admitted.

Notice was announced, That all Masters who are present and summoned to give Evidence, do immediately bring their Log-Books to the Table.

Agreed, That each Master on delivering his Log-Book be sworn, that the Book he delivers is the Ship's original Log-Book, kept from Day to Day, containing the very first Entries made therein, and without any Alteration or Addition since made, so far as respects from the 23d to the 30th of July 1778, both Days inclusive.

Several Masters producing their Books were sworn, and they delivered in their Books accordingly.

Robert Arnold, Master of the Robust, objecting to take the Oath, saying, his Log-Book had been altered; and being asked by whom? he answered, his Captain.—Agreed to examine him touching the same; he was accordingly sworn.

Prosecutor asked,

Q. Are your Reasons for objecting to the Oath from Alterations or Additions?

A. From both.

Prisoner asked,

Q. Were those Alterations or Additions made since it was known I was to be tried?

A. To the best of my Recollection, since it was known the Admiral was to be tried.

Q. By whom, or by whose Order, were those Alterations or Additions made?

A. By Captain Hood's.

Q. Were they made by you or the Captain?

A. Dictated by the Captain, and copied into the Log-Book by one of the Mates.

Court asked,

Q. Were the Orders given in Writing or verbally?

A. Some in Writing, some verbally.

Prisoner asked,

Q. Did you refuse writing them?

A. No; I obeyed Orders.

Court asked,

Q. Was any Officer present at the Time the Alterations and Additions were made?

A. I believe the First Lieutenant was Part of the Time.

Q. Was the Mate who marked the Log-Book the Officer who usually entered in it, or was it any other particular Person?

A. The same Person who always had the Care of the Log-Book always marked it.

Q. Where were the Alterations and Additions made, and in whose Presence?

A. In the Presence of the Captain and the First Lieutenant, in the Captain's Apartment.

Q. Did Captain Hood see the original Log-Book, as it was written from the Day of the Action to the 31st of July?

A. Captain Hood, when at Sea, sees the Log-Book every Day.

Q. Did you ask the Captain, after the Action, if he approved of what was put into the Log-Book relative to that Day's Transaction?

A. It was drawn out rough and shewn to the Captain, who approved it.

Q. Did Captain Hood see the Minutes of any other Days before or after, or for the Day of the Action only?

A. The Alterations and Interlineations were made for the 27th and 28th of July, by the Captain.

Withdrew.

Prosecutor requested Indulgence of the Court, that he may have Recourse to the Log-Books, now on the Table, out of Court Hours.

Prisoner objected, observing, they may be wanted to produce Matter for additional Charge; which the Prosecutor disavowed, declaring, he does not mean any Thing of that Sort.

This to be considered when the Court shall be cleared.

Notice now given that all Persons to be examined as Witnesses do withdraw.

Captain Samuel Marshal, of his Majesty's Ship the Arethusa, sworn.

Desired Leave of the Court to make the Use of his Minutes.

Prosecutor asked,

Q. When was the French Fleet first discovered?

A. About Half past Two, 24th July, by Log.

Q. Were the French Fleet during that Afternoon to Eastward of the British Fleet, and to Leeward, or how otherwise situated?

A. When the Signal was made, I was far astern, and not in my Station. I did not expect to be called for any Thing prior to the 27th, so am not prepared, but will Answer to the best of my Recollection.

Q. According to the best of your Recollection, from what you observed of the French Fleet during that Afternoon, how did they appear to be employed, were they forming their Fleet into a Line, or in what other Way?

A. I was endeavouring to get into my Station, and repeating Signals, and had not Opportunity of knowing what they were about.

It was observed by the Court, that the Charge is confined to the 27th and 28th of July; but the Prisoner did not object to Questions upon Transactions previous to the 27th, saying, he should go into Questions on those Days himself.

Q. In the Evening of the 24th, about Seven or Eight o'Clock, how were the French Fleet standing, towards, or from, the British Fleet.

A. I wish I had been better prepared for the Day; to the best of my Recollection we had our Larboard Tacks on Board, and some Ships had a press of Sail, and many Signals were made and repeated. The French were on their Starboard Tacks; but having so much to do with Signals, I cannot speak so well to the Fact as I could wish.

Q. At Eight o'Clock, did or did not the King's Fleet bring to on the Larboard Tack by Signal?

A. We brought to that Evening.

Q. About what Time?—Was it by Signal?

A. I do not recollect what the Signal is to bring to; it was in the Evening.

Q. Was there not a Signal for the Commander in the Third Post to bring to on the Larboard Tack, and did not the whole Fleet bring to accordingly?

This the Prisoner admits.

Q. Was the Wind at that Time W. and by N. or W. N. W. or how?

A. The Wind at West that Afternoon by Log; but cannot speak from Recollection.

Q. Was the French Fleet at, or about Eight o'Clock, to leeward of the British Fleet, or in what other Situation?

The Witness doubting of his being exact upon Recollection, the Prosecutor postpones examining him to any Matter at present, prior to the 27th; having the Court's Indulgence to call him in again.

Q. In what Situation, and at what Distance on the 27th, was your Ship from the Victory, at Six o'Clock in the Morning?

A. Nearly in her Station, rather abaft the Victory's Weather Beam, about Three or Four Miles Distance, as well as I can recollect.

Q. Were not the Ships of the British Fleet much extended, scattered, and dispersed?

A. There were some Ships of the Vice-Admiral of the Blue's Division to Leeward, and some of the Red Division rather to Windward, on the Weather Quarter, far aft.

Q. Were not some considerably more to Windward than others, and others to Leeward?

A. In the Morning they were so.

Q. Do you remember the Signal made the 27th in the Morning, on Board the Victory for several Ships, particularly the Vice of the Blue's Division, to chase to Windward?

A. It was not a Signal I repeated, I have no Note of the Time, such a Signal was made.

Q. Do you know the Names of the Ships the Signal was for?

A. I do not, nor are they in the Log Book, but I imagine, it was some Ships of the Vice-Admiral of the Blue's Division.

Q. Did you take Notice of a Number of Ships making Sail and chasing in consequence of that Signal?

A. Some Ships did; the Number I do not recollect.

Q. Did not those Ships chasing in consequence of that Signal, cause them to be separated from their Flag, and to be more scattered than they were before.

A. Cannot judge of it; I was to Windward.

Q. Whether it did or did not appear to you to have caused them to be more spread and scattered than they were before?

A. Those Ships which sailed best would most increase their Distance: I attended to the Flag, I can speak little to any thing else: I do not know when those Ships tacked.

Q. Was not the British Fleet then standing on the Larboard Tack till the Signal was made for the British Fleet to tack altogether?

A. They were.

Q. At what Hour was such Signal made?

A. About Half past Ten, by my Time, but that may be often erroneous.

Q. Soon after the British Fleet tacked, Was not the French Fleet discovered to Windward, approaching towards the British Fleet, on a contrary Tack, in a regular Line of Battle a-head.

A. We did not observe them in a Line of Battle, nor on a contrary Tack, till just before the firing began a-head?

Q. At what Time did you discover them to be in a Line of Battle.

Before an Answer was taken down, some Conversation arose which ended in the following Explanation from Captain Marshall.

A. In the Morning, the French Fleet were to Windward of the British Fleet at Day-light, with their Larboard Tacks on Board.—The British Fleet with their Larboard Tacks on Board.—I imagine about Nine o'Clock, they manœuvred and laid their Heads another Way, a little after Ten we tacked after them.—The first I saw of their being about was just before the firing began. I did not know that they were standing to us till just before the Firing began, consequently cannot know that they were in a Line of Battle.

Court asked,

Q. At what Time did you see the French Fleet before they began the Engagement in a Line of Battle?

A. I imagine they were so before they tacked, about Nine o'Clock; as they appeared to me.

Prosecutor asked,

Q. Did Admiral Keppel make the Signal for the Fleet to form into a Line of Battle, or into a Line on any Point of the Compass that Day, before the Engagement began?

A. No, I think not.

Q. Was there Time for doing so, from Day-light in the Morning, before the Engagement began?

A. Certainly—Five Hours.

Q. Did the King's Fleet advance towards the Fleet of France, without being in such Line or Order?

A. Yes.

Court asked,

Q. Was there a general Signal for the Whole Fleet to chase at this Time?

A. Not that Day; but I considered ourselves in chase of them from the first Time we saw them; excepting one Day, when there was a Signal for the Line of Battle.

Q. From the Manner of engaging, was it not impossible for our Ships to engage the Enemy Ship to Ship?

A. It was impossible; some of our Ships being so far to Leeward.

Q. Did Admiral Keppel make the Signal for Battle, whilst the Fleet was without any Line of Battle, or any other Line?

A. Yes.

Court asked,

Q. Can you recollect whether Admiral Keppel made the Signal for Battle before the firing began?

A. The firing began first.

Q. Did the *French* or *English* first fire?

A. I know not.

Q. Can you tell what Sail those Ships were under, which were ordered to chase, at the Time the Signal was made?

A. If I recollect, some of those Ships had their Main-sails up.

Q. Were all their other Sails set?

A. I think not; their topgallant-sails were, their Jibs and Stay-sails might be, I cannot tell.

Prosecutor asked,

Q. Were not those Ships then a-head of the Admiral, and on his Lee Bow?

A. Some of them I believe were.

Q. Such of them as were of the Vice of the Blue's Division being in that Situation, and on the Larboard Tack, was not that the proper Sation of that Division to be in Readiness to form the Line of Battle on that Tack, in case the Signal had been made for them, that Division being to lead on that Tack?

A. The Division of the Vice-Admiral of the Blue leads on the Larboard Tack.

Q. Were not some of the Frigates and Fire-ships exposed to the Fire of the Enemy before they could get out of the Way?

A. I know not.

Q. Did any of the Enemy's Shot go over your Ship before you got out of the Way?

A. No; not till I was in my Station abreast of the *Victory* to Leeward, and after I had brought up, and then we twice bore up a little to get out of the Reach of Shot, to the best of my Remembrance.

Q. When the *Arctusa* bore up to go to Leeward of the *Victory*, were any of the other Frigates or Fireships then to Windward of our Ships, and farther ahead?

A. There might be, I cannot be positive.

Q. What Situation did you preserve with respect to the *Victory* during the Time she was proceeding along the Rear of the *French* Line?

A. I endeavoured to keep on the *Victory*'s Beam, out of Gun-shot.

Q. Were you in that Position when the *Victory* past the last of the *French* Line?

A. I cannot be positive to the exact Position of the Ship; the *Victory* was in Smoke; I could only see her at Intervals; I endeavoured to keep in my Station.

Q. When the *Victory* had passed the Rear of the Enemy's Line and ceased firing, and the Smoke cleared up, did you then see her, and in what Situation was you then from her?

A. I saw the *Victory* certainly, but so long ago I cannot recollect her exact Situation.

Q. How long and how far did the *Victory* continue to stand on the same Tack, after passing the last of the *French* Fleet before she wore?

A. To the best of my Recollection, but a very little while.

Q. What do you mean by a very little while?

A. I cannot confine myself to Time at such a Distance.

Q. As to Distance after passing the last of the *French* Line?

A. I cannot ascertain the Distance.

Q. At what Time did the *Victory* wear?

A. We repeated the Signal soon after One o'Clock, as it appears by the Minutes taken by the Purser of the Ship, who was the Person I appointed so to do: I never had the Glass out of my Hands.

Court asked,

Q. Do you know it from your own Knowledge?

A. By my Glass I saw the Signal, and imagine it was soon after One.

Q. Was the Signal for Battle on board the *Victory* hauled down before or after she wore?

A. To the best of my Recollection, after she wore.

Q. How long after?

A. Not a great while.

Q. Have the Minutes taken on board the *Arctusa* of the Signals made, been examined and compared with the Minutes taken on board the *Victory*?

A. The Minutes I have in my Hand were taken by the Purser, and will be sworn to, and have not been compared with any other Minutes, except seeing as to Time, and there has been no Alteration.

Q. Whether those Minutes you have in your Hand mark the Time when the Signal for Battle was hauled down?

A. It does, and was at Twenty-six Minutes past One in the Afternoon.

Q. Did the *Victory* at any Time set her Topgallant-sails that day?

A. I do not recollect she did.

Q. What was the first Signal the Admiral made after the *Victory* wore, and stood again towards the *French* Fleet?

A. The Union and a blue Flag with a red Cross at the Mizzen-peak, and one Gun for the Fleet to form a Line ahead, a Cable's Length asunder.

Q. At what Time?

A. At Forty Minutes past One, and hauled down Twenty-three Minutes past Three.

Q. What was the next Signal made?

A. Fifty Minutes past One, Flag striped blue and white at the Mizentopmast-head, yellow Pendant at the Maintopmast-head, for the *Proserpine* to come within Hail; soon after a yellow Pendant at the Foretopmast-head, for the *Arctusa* to come within Hail.

Q. When was the next Signal?

A. Fifty Minutes past Two. I was then on board the *Victory*. Blue Pendant Ensign-staff, for the Fleet to wear.

Q. What was the next Signal?

A. As appears by the Minutes at Three o'Clock, yellow Pendant at the Maintopmast-head, the *Proserpine*'s Signal.

Q. What the next?

A. At Twenty-four Minutes past Three, blue Flag at the Mizzen-peak for Ships to Windward to get into the Admiral's Wake; hauled down at Thirty Minutes past Three.

Q. What the next?

A. Thirty Minutes past Three, Union and blue Flag with a red Cross at the Mizzen-peak, a Signal for the Fleet to form a Line a Cable's Length ahead.

Q. What the next?

A. At Fifty Minutes past Three, yellow Pendant at the Mizentopmast-head, the *Milford*'s Signal.

Q. What the next?

A. A white Pendant at the Starboard Mizentopmast Yard-arm, nearly the same Time; the *Duke*'s Signal.

Court asked,

Q. You had not the Signal for the Line of Battle out then?

A. The Signal had been out upwards of Twenty Minutes.

Prosecutor

Prosecutor asked,

Q. What the next Signal?

A. A Flag striped blue and white, Maintop-mast Head, a particular Ship to make more Sail.

Court asked,

Q. Was that hoisted with the white Pendant?

A. Nearly at the same Time.

Q. Do you recollect whether any other Pendant was out at that Time?

A. A yellow Pendant was out, but it is not hauled in by the Minutes.

Prosecutor asked,

Q. Next Signal?

A. At Thirty-seven Minutes past Four, a Spanish Ensign at the Maintopmast-head, observing Ships out of their Stations.

Q. Next Signal?

A. Fifty-six Minutes past Four, a Red Pendant at the Mizentopmast-head, the *Prince George's* Signal.

Court asked,

Q. How long after the Spanish Flag was hoisted?

A. It appears at the same Time, but I apprehend if we did not make it, the *Victory* did.

Prosecutor asked,

Q. Next Signal?

A. A blue Pendant, the Starboard Mizentop-fail Yard-arm. The *Bienfaisant's* Signal Fifty-seven Minutes past Four.—Have not Minutes of more Ships Signals than Two, but there were more Signals made, I am sure, at that Time, for Ships out of their Stations.

Q. Do you mean more at that Time or after?

A. I think at that Time, there were more Signals made for Ships out of their Stations, but the Spanish Flag was out till Dark.

Prisoner asked,

Q. Did you take any Notice of the *Prince George* and *Bienfaisant*, who were both formed regularly in a Line ahead, immediately upon that Signal, backing their Maintopsails and falling into a Line astern.—Whether you saw them obey that Signal so instantaneously?

A. I did not take any Notice, I was attentive to the Admiral.

Prosecutor asked,

Q. Inform the Court of the several Ships Signals which were thrown out, at different Times under that Flag, after the two Pendants for those two Ships before named, in the Order in which they were thrown out, and naming the Time when each was so thrown out?

A. At Twenty-two Minutes past Five, yellow Pendant Maintopmast-head, the *Proserpine's* Signal. Thirty-two Minutes past Five, yellow Pendant, Starboard, Maintopfail Yard-arm.—*Fox's* Signal.

Q. I want you to go through all the Ship's Signals after the Spanish Flag was thrown out.—There is an Account given that the blue Flag was hoisted, and no Account given when it was hauled down, please to recur back to that?

A. It was hauled down Thirty Minutes past Three.

Q. When was it hoisted?

A. Twenty-four Minutes past Three.

Court asked,

Q. What was that blue Flag a Signal for?

A. The Ships to Windward, to get into the Admiral's Wake.

Q. Then the Union Flag was bent to it?

A. The Signal was repeated for forming the Line. I remember seeing the Blue Flag hoisted at the Mizen-peak of the *Victory*, and seeing a Signal of one Side or other of the Union, but I

could not discern what Signal it was. It was hauled down and left by itself, if I recollect. Ten Minutes past Six a Blue Flag hoisted at the Ensign-staff; it was hauled down in Three Minutes, having been hoisted by Mistake, and then hoisted under the Line of Battle Signal, at the Mizen-peak, for Ships to Windward to get into the Admiral's Wake. Thirty-six Minutes past Six red Pendant Larboard, Maintopfail Yard-arm, *Elizabeth's* Signal. Same Time a blue Pendant at the Larboard Maintopfail's Yard-arm, the *Terrible's* Signal.

Q. Was the blue Flag flying at the same Time?

A. Yes; under the Signal for the Line of Battle at the Mizen-peak, and the Spanish Flag was still flying. The next is a blue Pendant Larboard, Fore-yard-arm, *Centaur's* Signal. Same Time white Pendant Larboard, Mizentopfail Yard-arm, *America's* Signal. At the Time those Signals were made, there were either Four or Five blue Pendants flying on Board the *Victory* at different Places; but I had only Two blue Pendants to repeat with. I do not know what particular Ships they were for, having no Minutes of it. There were the *Ramillies*, *Thunderer*, and *Cumberland*.

Prosecutor asked,

Q. Were any more Signals made before Dark that Night?

A. I have no Minutes of any Signal made after Thirty-six Minutes past Six, P. M.

Q. After the Admiral's own Division had passed the Rear of the Enemy's Fleet, did you look towards the Enemy's Fleet and those Ships of ours then engaged?

A. I certainly did.

Q. Did you take any particular Notice of the Situation of the Vice-Admiral of the Blue during that Time?

A. The first I saw of the Vice-Admiral of the Blue was coming out of Action, disabled as some other Ships were; the Sails were disabled, and the Rigging was disabled.

Q. Was this Observation before or after Admiral *Keppel* had wore?

A. Before.

Q. Did you take Notice of the *Formidable* after coming out of Action to wear, and lay her Head towards the Enemy again?

A. I did not observe her wear.

Q. Did you observe her lay with her Head towards the Enemy again? though you did not see her the Moment she did it.

A. Yes; for I conceived my Station now to be to windward, after wearing made sail to get into my Station, and tacked close upon the *Formidable's* Quarter, as I would not go so near to windward of the Vice-Admiral. I then fetched under the *Victory's* Lee-Bow, and put about, and while in Stays, was hailed from the *Victory* to come on Board, which I immediately obeyed.

Q. When you first saw the *Formidable's* Head towards the Enemy, was that before or after the Admiral had made the Signal to wear?

A. After.

Q. At what Distance did you esteem the Admiral from the *Formidable*, at the Time when her Head was towards the Enemy?

A. At no very great Distance on the *Victory's* Lee Bow.

Q. Are you not enabled to say at what Distance?

A. It could be no great Distance—we were soon about.

Q. What Sail had the *Victory* out, while she

was standing beyond the Rear of the *French Fleet* till she wore?

A. I cannot tell.

Q. What Sail had she set when she was afterwards standing towards the *French Fleet*, after having wore?

A. I protest I do not recollect—the Main Top-sail was unbent.

Q. Did you observe the *Formidable*, when she wore, to lay her Head from the Enemy, towards the Admiral?

A. She must have wore, I imagine, when I was in the Boat—I did not see it.

Q. The first Time you did take Notice of her, with her Head towards the Admiral, was that before or after you observed the Admiral's Main top-sail was unbent?

A. I observed her from the *Victory's* Quarter-deck, standing on the other Tack. The Admiral was now on the Larboard-tack, and the Vice Admiral of the Blue on the Starboard-tack; and I think the *Victory* was the headmost Ship at that Time of those Ships then together.

Q. Did you continue on board the *Victory* till the *Victory* and *Formidable* met?

A. I was on board the *Victory*, when the *Formidable* passed to Leeward.

Q. When the *Victory* passed the *Formidable* to Windward, did not the *Victory* immediately wear,

pass under the *Formidable's* Stern to Leeward of her, and steer a Course from the Wind?

A. Not immediately, I think.

Q. What did the Admiral do when he was to Leeward of the *Formidable*?

A. The Admiral had discharged me, and I left the *Victory* while she was wearing, and I went on board my own Ship.

Prisoner asked,

Q. When the *Formidable* stood towards, and to Leeward of the *Victory*, when you was on board, was the Signal for the Line of Battle ahead then flying on board the *Victory*?

A. It was. It appeared so in the Minutes.

Q. What was the Vice Admiral of the Blue's Station on the Larboard-tack, when the Signal was flying for the Line of Battle ahead on board the *Victory*?

A. Ahead of the *Victory*, leaving room for the *Foudroyant*, *Prince George*, *Bienfaisant*, *Vengeance*, *Worcester*, *Elizabeth*, *Defiance*, and *Robust*, to form between.

Q. Was there any one Ship, at the Time when the Vice-Admiral of the Blue passed ahead of the *Victory*, between her and the Enemy, in Obedience to that Signal, whose Station it was?

A. None, except Sir Robert Harland's Division.

Adjourned, being near Four o'Clock, till Ten o'clock To-morrow Morning.

THIRD DAY.

SATURDAY, the 9th of JANUARY, 1779.

THE Court met according to Adjournment.

Before the Doors were opened, the Request which had been made Yesterday by the Prosecutor, for Leave to have Recourse to the Log-books on the Table, was considered.

It was agreed by the Court, the same cannot be complied with.

The Doors were now opened, the Prisoner brought into Court, and Audience admitted.

Captain Samuel Marshall called in again.

The Minutes of what he gave in Evidence Yesterday were, at his Request, read over to him.

Prosecutor asked,

Q. Whilst the *Formidable* was between the *Victory* and the Rear of the Enemy's Fleet, was not she the nearest Ship to the Enemy, and the only one between them and the *Victory*?

A. I think she was.

Q. Did you observe three of the Enemy's Ships standing directly for the *Formidable*, and at a less Distance from her than the *Victory*, and with more Sail than the *Victory*, she having unbent her Main-top-sail, and hauled down the Signal for Battle?

A. You will please to remember I told you, I was on board the *Victory*. The first I saw of the *French Ships* standing towards us, was from the Admiral's Starboard Quarter-gallery. I can by no means think they were at a less Distance from the *Formidable* than the *Victory*. I know not what Sail the *French Ships* had. To the best of my Recollection, the *Victory* bent her Maintop-sail about the Time she wore for the *French Fleet*. I was on the Quarter-deck of the *Victory*, and saw the Buntlings of the Maintop-sail hauling up just before I went out of the Ship. I have already

said, the Signal for Battle was hauled down Twenty-six Minutes past One o'Clock.

Q. Whilst the *Victory* was standing towards the Enemy, were any of the Ships of the Admiral's own Division in their Stations in the Line ahead of him?

A. No.

Q. Did the Admiral make the Signal for their getting into their Stations whilst he was standing towards the Enemy?

A. The Signal was made for the Fleet to form a Line ahead, a Cable's Length asunder, as appears by my Minutes, and, to the best of my Recollection, was flying at that Time.

Q. Was the Signal made for observing any of the Ships whose proper Station was ahead of the Admiral, being out of their Stations at that Time?

A. No, I believe not.

Q. Were not the Vice-Admiral of the Blue and the Ships of his Division just then come out of Action and disabled?

A. I Yesterday observed, that the *Formidable* and some Ships were disabled; but their Names I do not know.

Q. Had not the *French Fleet* broken their Line, and were they not then in Disorder?

A. I had but a momentary View out of the Admiral's Starboard Quarter-gallery, and cannot ascertain it.

Q. During the Time the Admiral was standing towards the *French Fleet*, where was the Vice-Admiral of the Red and his Division?

A. Nearly upon the Admiral's Larboard or Weather-beam, rather before the Beam.

Q. At what Distance did you esteem the Vice-Admiral of the Red from the *Victory* at the Time she wore and stood from the Enemy?

A. I cannot determine Distances at this Period.

Q. Was it not considerably to Windward of the *French*?

A. I have observed that I saw the *French* Fleet out of the Admiral's Starboard Quarter-gallery, and that the Vice-Admiral of the Red's Division was rather before the Larboard or Weather-beam of the *Victory*.

Q. Where was you when you saw the Vice of the Red's Division to Windward, and before the *Victory's* Beam?

A. On the *Victory's* Quarter-deck.

Q. Whilst the Admiral was standing towards the *French* Fleet, was any Signal made for the Ships on the Starboard Tack in a Line of Battle, to take the Lead at that Time?

A. No.

Q. Did the *Victory* wear without standing beyond the *Formidable*, and first seem to offer to pass again to Windward of her, as soon as the *Victory* was far enough clear of the *Formidable* to wear, whether she did not wear?

A. I said Yesterday, I left the *Victory* when she was wearing; I likewise observed, that the *Formidable* was passing on the starboard Side of the *Victory*.

Q. After you returned on Board your own Ship, did you follow the *Victory* in order to be ready to repeat Signals?

A. I got into my Station as expeditiously as possible.

Q. How did the Admiral steer after he passed to Leeward of the *Formidable*?

A. It appears by my Log S. by E.

Q. Was that upon or from the Wind?

A. From the Wind.

Q. How many Points?

A. I cannot pretend to ascertain the Sailing of the *Victory*, as we sailed various Courses to keep our Station.

Q. How was the Wind?

Copy of the *Arethusa's* Log produced in Court.
Captain Marshall observed, that his Master had been drowned.

A. I have not the Wind down till Five o'Clock, when it was S. W. by W.

Q. Do you remember what Sail the Admiral carried?

A. No.

Q. When the blue Flag at the Mizzen-peak was first hoisted at Twenty-four Minutes past Three o'Clock, was the *Formidable* near to, or at a Distance from the *Victory*?

A. At that Time I cannot recollect.

Q. The *Victory* having passed to Leeward of the *Formidable*, and the *Victory* standing upon a Wind from that Time, could her Distance then be great from the *Victory* if she had laid still?

A. I have not said, if I recollect, that the *Victory* was standing on a Wind.

Q. If that Space of Time would admit of a great Distance, whether the *Victory* was going on a Wind or going large?

A. It appears by my Minutes to be about Thirty-four Minutes between the making the Two Signals. I have not in my Log any Rate of the Ship's going till Five o'Clock, consequently cannot ascertain that.

Q. Which Two Signals do you allude to?

A. The blue Pendant at the Ensign-staff, made at Fifty Minutes past Two, for the Fleet to wear, and the blue Flag at the Mizzen-peak at Twenty-four Minutes past Three, for Ships to Windward to get into the Admiral's Wake.

Q. As your Station was to Windward of the Admiral, did you observe any one Ship of the

Vice-Admiral of the Blue's Division at that Time to Windward of the Admiral?

A. Yes.

Q. Can you name any?

A. None particularly, of that Division.

Q. What Reasons have you for saying any of them were in that Situation?

A. I was on the *Victory's* Weather-beam, about Two or Three Miles, and there were several Ships which appeared nearly astern of the *Arethusa*.

Q. Do you strictly attend to the Time I am speaking of, Thirty-four Minutes after the Admiral had wore?

A. Cannot speak to Time, not having kept any Minutes of the Disposition of the Fleet.

Q. Did you in the *Arethusa* get Three Miles upon the Admiral's Weather-beam in Thirty-four Minutes?

A. I should suppose not; she was got there as expeditiously as possible.

Court asked,

Q. What Distance was the *Arethusa* from the *Victory* when you got into the Boat?

A. Not a great Distance; but the *Victory* takes a great deal more Time in wearing than the Frigate would in taying.

Prosecutor asked,

Q. By the *Victory's* continuing to stand to the Southward as before mentioned, did not she leave the *Formidable* astern, and somewhat to Windward of her Wake, she having passed to Leeward of her?

A. The *Formidable* was to Windward and astern.

Q. Did not the Distance between the *Formidable* and the *Victory* continue increasing the whole Afternoon?

A. I cannot recollect.

Q. Was not the Course the Admiral did steer directly from the Enemy?

A. The Enemy appeared to me on the *Arethusa's* Larboard-quarter.

Q. Did the Admiral continue the same Course till Night?

A. I do not know from my own Knowledge.

Q. Don't you know from your own Knowledge, whether the Fleet continued to stand to the Southward, in like Manner as they did immediately after the Admiral wore and stood to the Southward?

A. The Fleet stood to the Southward.

Q. Did they continue to do the same all Night?

A. Yes.

Q. When the Admiral wore, and stood to the Southward, did the *French* Fleet then begin to form a new Line of Battle?

A. I know not when they began to form.

Q. When did you see they were forming a Line of Battle?

A. Some Time in the Afternoon.

Q. Can you recollect whether that was before or after the Admiral had wore?

A. After the Admiral had wore.

Q. In forming their Line, did they point to Leeward of the *British* Fleet?

A. Yes, they did.

Q. For that Purpose, did it appear to you that they went from the Wind?

A. I cannot say.

Q. In the Afternoon, whilst the Signal for the Line of Battle ahead was flying, and the Admiral with the Fleet standing to the Southward, did not Vice Admiral Sir Robert Harland, with his Division, bear down in the Admiral's Wake, and at what Time?

D

A. Sir

A. Sir Robert Harland did bear down—I do not exactly know into the Admiral's Wake—the Time I cannot speak to.

Q. Was it nearly in his Wake?

A. It was to Leeward of me—I cannot answer positively.

Q. Was not the Vice Admiral of the Red's proper Station, according to the Signal then flying, a-head of the Admiral?

A. The Vice Admiral of the Red, and his Division, led on the Starboard Tack.

Q. Did you observe the Vice Admiral of the Red afterwards make Sail into his proper Station ahead?

A. The Vice Admiral of the Red, and some of his Division, went ahead agreeable to Signal.

Q. Can you say the Time when you observed they made Sail for that Purpose?

A. I cannot.

Q. What Distance did you observe the *Formidable* was left a Stern from the *Victory* at Six o'Clock?

A. I cannot speak as to Distance.

Q. During that Night, did you observe any Signals made by the *French* Fleet by Sky Rockets?

A. No.

Q. Was the *French* Fleet, or any Part of it, in Sight the next Morning?

A. There were Three strange Sail, which I imagined to be Part of the *French* Fleet.

Q. Were any more of them seen from your Ship that Morning?

A. No, none I was ever acquainted with.

Q. Did any of our Ships, to your knowledge, make the Signal for seeing strange Ships, and for how many?

A. There were some Signals made. I was out of my Station, and getting into it as expeditiously as possible; I do not know how many, or by whom the Signals were made.

Q. Do you know whether the Admiral's Ship answered them?

A. I do not.

Q. Do you know for what Quarter of the Compass the Signal was made for seeing those Ships?

A. I do not.

Q. Is it noted in your Log-Book whether such Signals were made?

A. It is not.

Q. Were not those Three Ships mentioned very near the *British* Fleet?

A. I cannot judge of Distance.

Q. Did they crowd Sail from the *British* Fleet?

A. Yes, I think they did.

Q. Which Way did they go?

A. They seemed to me to stand away upon our Starboard Quarter. I imagine to the South-east.

Q. Did the *British* Fleet, or any Part of them, pursue those Ships?

A. I know not.

Court asked,

Q. Did you take the three Ships you saw in the Morning to be Line of Battle Ships or Frigates?

A. I cannot say what they were.

Prosecutor asked,

Q. Did the Admiral early in the Morning of the 28th wear and lay his Head with the whole Fleet to the Northward?

A. Yes.

Q. Can you tell the Bearings and Distance of *Ushant* at Noon of the 27th according to your Ship's Reckoning?

A. *Ushant*, N. 86. E. 28. Leagues by Log.

Q. What was it at Noon on the 28th?

A. *Ushant*, N. 76. E. Distance 22 Leagues.

Q. How was the Wind in the Morning of the 28th?

A. At Two o'Clock the Wind W. by Log, and no Alteration mentioned in that Day's Work.

Q. What sort of Weather was it?

A. It was a Fresh of Wind.

Q. Thick or clear?

A. Hazy, I think.

Prosecutor has no further Questions to ask the Witness at present.

Prisoner asked,

Q. On what Tack was the *French* Fleet at Day-light in the Morning of the 27th?

A. On their Larboard Tack.

Q. When did they tack and stand on the Starboard Tack?

A. About Nine o'Clock.

Q. After they were upon the Starboard Tack did you ever lose Sight of them for any Time?

A. No.

Q. When you saw them beginning their Fire upon the headmost of the *English* Fleet, did you observe where the *French* Admiral was in his own Fleet?

A. I did not.

Q. Do you know what Sail the *Formidable* had on the Larboard Tack when she passed the *Victory*?

A. I cannot say.

Q. Was the Signal for the Line of Battle ahead ever hauled down while the *Victory* was leading to the *French* Fleet on the Larboard Tack?

A. No.

Q. How many Ships of the Vice-Admiral of the Red's Division were with him at the Time he bore down to the Admiral?

A. I do not know at that Time.

Q. Do you recollect what Ships of the Center Division were regularly formed astern of the *Victory* in their Stations?

A. I cannot say what; there were very few.

Court asked,

Q. From the Day you first saw the *French* Fleet to the Time you lost Sight of them—Do you from your own Observations or Knowledge know of any Act of the Commander in Chief, Admiral Keppel, behaving or conducting himself unbecoming a Flag Officer?

The Prosecutor objected to this Question, saying it was perfectly irregular to ask Questions to matter of Opinion, but that if he should be hereafter allowed to ask such Questions he would not object; which being assented to, the Question was thereupon repeated.

A. No; as God is my judge.

Withdrew.

Sir William Burnaby, Bart. Captain of the *Milford*, sworn.

He had Leave to have Recourse to Minutes, the greatest Part of which he said were taken at the Time of Action.

Prosecutor asked,

Q. When was the *French* Fleet first discovered?

A. Friday the 24th of July, at Two in the Afternoon by Log.

Q. Were they that Afternoon to Eastward, and to Leeward, or how otherwise situated?

A. They were to the WESTWARD of us, nearly ahead, or rather to Leeward.

Q. How did they appear to be employed that Afternoon; were they forming their Line, or in what other Way, from Two till Eight o'Clock?

Before

Before this Question was put, the Court withdrew into another Room, to consider whether to admit of any Questions prior to the First Day mentioned in the Charge.

After a little while, they returned into Court, having agreed, that the Accuser and Accused shall have Liberty to ask any Questions so far back as the 23^d July.

The last Question then repeated.

A. They were standing towards us in great Disorder; Admiral Keppel made my Signal to come within hail of him, and gave me Orders to make Sail ahead to reconnoitre the French Fleet; I made Sail directly towards them, the French Fleet then standing on towards us, keeping a little from the Wind, and still in Disorder; I stood towards them till within two Gun shot, or Gun-shot and a Half; the Van of their Fleet, I judge, was within six or seven Miles of the Lee Bow of the Van of Admiral Keppel's Fleet. At Half past Four I tacked from the French Fleet, and stood towards the Victory. The French Fleet nearly about that Time began to form their Line ahead, seeming to direct their Course to Leeward of our Fleet a very little from the Wind.

He was called back to the Question, the Prisoner observing the Vice Admiral's Question was to a Period later than Captain Burnaby has got to.

Court asked,

Q. Give an Account of yourself and the French Fleet till Eight o'Clock that Night.

A. I observed them under easy Sail from the Time that I tacked, employed in forming their Line, and directing their Course to leeward of our Fleet. It was very hazy and late before I joined the Victory a second Time, and received Orders to go ahead and keep between the French Fleet and ours; but I cannot say I observed particularly their Motions, from the Thickness of the Weather, to the Hour of Eight. The Rear of the French Fleet, at the Time I first spoke to Admiral Keppel, were considerably ahead of our Fleet at half past Eight.

Q. What was the Position of the French Fleet with respect to the British Fleet at Eight o'Clock?

A. They were a little on the Lee Bow, many of them then formed in a Line of Battle.

Q. Upon what Tack?

A. Upon the Starboard Tack.

Q. Did they continue to stretch upon that Tack to the Leeward of our Fleet?

A. I did not observe they did after Eight o'Clock.

Q. Were they then to Leeward of the British Fleet?

A. Yes.

Q. How was the Wind at that Time?

A. About W. and by S.

Q. Did the British Fleet bring to on the Larboard Tack at Eight o'Clock by Signal?

A. About Half past Eight Admiral Keppel made the Signal for the Fleet to bring to on the Larboard Tack.

Q. Did the British Fleet continue to lay-to all that Night?

A. To the best of my Recollection, they did. About Four o'Clock, I think, Admiral Keppel made a Signal to form into a Line N. E. and S. W.

Q. Were not the Milford and another Frigate stationed between the two Fleets to make Signals during the Night, to observe the Motions of the Enemy, and make Signals accordingly?

A. I do not know what Orders were given to any other Ship than my own. I was directed to keep ahead between the French Fleet and ours, and

to acquaint Admiral Keppel if they should be standing towards us, or likely to approach us very soon.

Q. Had you Occasion to make any Signal to the Admiral, during that Night, of the Motion of the Enemy?

A. No; as I brought to ahead of our Fleet, and had lost Sight of the Enemy, it being very late before I reached the Van of our Fleet.

Q. Did you observe the other Frigates make Signals that Night?

A. I did not.

Q. What Latitude was you in, by your Reckoning, the 23^d of July at Noon?

A. I do not recollect, not having my Log-book.

Q. The French Fleet being to Leeward of the British Fleet at Night, and standing to the Southward, at the same Time our Fleet laying to on the Larboard Tack with their Heads to the Northward, are you of Opinion, that if they were disposed to avoid coming to an Engagement, they would have continued to stand on that Tack during that Night, having the Port of Brest under their Lee?

A. I think it very possible they might.

Court asked,

Q. Do you know they did not stand on all that Night on that Tack?

A. They did not.

Q. How do you know they did not?

A. Because in the Morning, it then being thick and foggy Weather, I found myself a little to Leeward of the French Fleet, they then being some Distance ahead, and to Windward of our Fleet.

Q. What Distance were you from the English Fleet in the Morning?

A. I do not justly recollect.

Q. When did you make Sail afterwards?

A. At Day-light in the Morning, when Admiral Keppel made a Signal for the Fleet to form a Line.

Prosecutor asked,

Q. In the Morning had not the French Fleet gained the Weather-gage of the British Fleet, and placed it between them and Brest?

A. They were to Windward of us, Wind then N. W. by W.

Q. The British Fleet being then to Leeward, and the Wind at N. W. by W. were not they between the French Fleet and Brest?

A. Yes.

Court asked,

Q. When you brought to at Night the French Fleet was rather to Leeward. In the Morning when you made Sail, you say the French Fleet was to Windward of the British Fleet.—Do you know from your own knowledge, whether they came there by working to Windward or by a Shift of Wind?

A. The Wind shifted to Northward.

Q. Did that bring the French Fleet to Windward or to Leeward?

A. I believe it might, but I wish not to speak positively to that.

Prosecutor asked,

Q. Do you know or have Reason to believe, that the French tacked after Dark, and carried a Prefs of Sail all that Night, on the Larboard Tack, one of the Ships in the Morning appearing to have carried away her Foretopmost, the whole of the French Fleet at Daylight being at a considerable Distance ahead of the British Fleet?

A. I did not see the Ship, I remember it being spoken of.—They must have tacked or wore, and stood close on a Wind on the Larboard Tack, from the Position they appeared in, in the Morning.

Court

Court asked,

Q. According to the Question that was asked you, if they had carried a Press of Sail all Night, would they have been in Sight of you in the Morning?

A. It is very possible, I think they might have been.

Prosecutor asked,

Q. When you saw them in the Morning, what Sail did they appear to have set.

A. I do not recollect the Sail they had set, they seemed to be Sails suitable to the Weather.

Court asked,

Q. What Sort of Weather had you?

A. It was very thick, and I do not recollect the Strength of the Wind.

Prosecutor asked,

Q. At what Time did the *French* Fleet tack in the Morning and come upon the Starboard Tack?

A. I do not recollect.

Q. Did it blow very fresh all that Night, and in the Morning, with a high Sea?

A. I think it blew somewhat strong in the Night, but, as I before said, I do not recollect the Strength of the Wind.

Q. What Sail were you under in the Morning at Day-light when the Fleet made Sail.

A. I had two Reefs in my Topsails; and at Half past Six, let the second Reef out.

Adjourned till Monday Ten o'Clock.

FOURTH DAY.

MONDAY, the 11th of JANUARY, 1779.

THE Court met according to Adjournment.

The Doors were opened.

The Prisoner brought in, and Audience admitted.

Captain Sir William Burnaby, Bart.
again called in.

The Witness requested to amend the Answer which he gave to the Question put to him Yesterday, in the following Words.

Q. "Were they (meaning the *French* Fleet) that Afternoon (meaning the 24th,) to Eastward or to Leeward, or how otherwise situated?"

A. They were to Eastward of us, nearly ahead, or rather to Leeward.

Prosecutor asked,

Q. Whether, during that Day, it did not appear to you, that the *French* were collecting their Ships together, and endeavouring to keep their Fleet in a Line of Battle?

A. I think they were.

Q. Particularly relate the Sort of Weather the two Days of the 25th and 26th of July.

A. It was fresh Gales and squally, with such a Sea as is usually attendant on such Weather.

Q. Did the *French* Fleet during those Days keep the Weather-gage?

A. Yes, they did.

Q. Did they carry such Sail as to preserve their Line of Battle?

A. I generally observed them in a Line of Battle.

Q. Did they preserve nearly the same Distance from our Fleet?

A. I think they rather increased their Distance from our Fleet.

Q. At what Time, when the Weather moderated, did the *French* Admiral croud Sail away, or occasionally shorten Sail for better perfecting his Line of Battle?

A. At Times they seemed to carry a Press of Sail, tolerably well preserving their Line; at other Times, they went under an easy Sail seemingly to perfect their Line.

Q. With the Wind and Sea on those Days, do you think Ships could have fought their Lee Lower-deck Guns?

A. I think it would have been attended with some Risk if they had attempted it.

Q. Could Ships have fought their Weather Lower-deck Guns, or Part of them?

It was observed by the Court, that such Questions would be more proper, if put to Officers of the Two and Three Deck Ships; but this being over-ruled, the Question was repeated.

A. I think they might have fought Part of them.

Q. Then would it, or would it not, for those Reasons, have been disadvantageous to the *French* Fleet to have bore down, and attacked us on those Days?

A. I think it would have been disadvantageous to them, as far as I am able to judge.

Q. In the Morning of the 27th of July, was the *British* Fleet scattered, extended, and dispersed?

A. They were somewhat dispersed.

Q. Do you remember a Signal being made on board the *Victory*, in the Morning of the 27th, for several Ships of the Vice Admiral of the Blue's Division to chace to Windward?

A. To the best of my Knowledge, between Nine and Ten, a Signal was made for some Ships to chace, but what Ships I do not know.

Q. Was that Signal to chace to Windward?

A. I do not recollect; but the Ships seemed to make Sail to Windward.

Court asked,

Q. Do you remember what Signal it was?

A. I do not.

Prosecutor asked,

Q. Were the Ships that did chace of the Vice Admiral of the Blue's Division?

A. I was such a Distance from our Fleet, being near the *French* Fleet, I could not discern what they were.

Court asked,

Q. When you saw the Signal to chace, between Nine and Ten o'Clock, did you observe any Ships of the *British* Fleet to make more Sail than they had done before?

A. To the best of my Recollection, several aftern did.

Q. Did you yourself see any Ships aftern make more Sail in consequence of the Signal?

A. I observed some Ships on the Rear of our Fleet to make more Sail.

Prosecutor asked,

Q. Is there any Mention made of that Signal in your Log?

A. No,

A. No, there is not.

Q. At what Time did the *British* Fleet Tack altogether on the 27th, to stand towards the *French* Fleet?

A. I do not recollect.

Q. Is there no Notice of that in your Log-Book?

A. No.

Q. Did the Admiral make the Signal for the *British* Fleet to form into a Line of Battle ahead, or any Point of the Compass, on that Day before the Battle began.

A. I do not recollect there was.

Q. At what Time did you observe the *French* Fleet to be in a regular Line of Battle?

A. Tolerable early in the Morning.

Q. Did the Admiral make the Signal for Battle whilst the Fleet was some what dispersed?

A. The Signal to engage was made about Half past Eleven; our Fleet then seemed scattered.

Court asked,

Q. Do you recollect who began the Engagement?

A. The *French*.

Q. Do you know the Hour in the Morning when the *French* Fleet were in a regular Line of Battle?

A. About Eight o'Clock they appeared pretty well formed.

Prosecutor asked,

Q. Did you observe some of our Frigates and Fireships being exposed to the Enemy's Fire before they could get out of the Way?

A. Both the Fireships; also the *Proserpine* and *Milford*, before did get out of the Way.

Court asked,

Q. Do you remember if the Signal was made for Battle before the *French* Fleet began to engage?

A. It was afterwards.

Q. How long?

A. I suppose the Space of Seven or Eight Minutes.

Prosecutor asked,

Q. Did the *French* by attacking the *British* Fleet, whilst in no Line, but somewhat dispersed, render it impossible for us to engage Ship to Ship, or to bring on a general Engagement?

A. From their Position, as I have before observed, somewhat dispersed as far as my little Experience in the Service will admit me to say, it prevented our Ships engaging Ship to Ship nearly at the same Time.

Court asked,

Q. If the Admiral had not advanced towards the Enemy, although his Line of Battle was not regularly formed, could he have brought the *French* to Action, had he waited to form the Line?

A. I should think not, if the *French* had been disposed to get away.

Q. Were the *French* Fleet close hauled, or did they bear down to oppose the *British* Fleet Ship to Ship, they (the *French*) being to Windward of the *British* Fleet, and having it in their Power so to do?

A. I thought they appeared to keep a little from the Wind just about the Time of their coming into Action.

Q. Do you recollect what Sail the *French* were under when they first began the Action?

A. I do not recollect.

Q. Had they their Fore-sails down?

A. I believe they had.

Q. Were their Main-sails set?

A. I am not certain.

Q. You have said the *French* kept their Ships a little from the Wind; how many Points?

A. I do not know.

Q. Was it to stretch ahead of our Fleet, or to keep to the Windward of our Fleet?

A. Their bearing away could not be with an Intention to keep their Wind.

Q. Had the *French* Fleet lain to, to receive the *British* Fleet, would not the Van of our Fleet have reached the Van of the *French* Fleet, by which a more general Action would have been brought on?

A. Yes, to the best of my Judgment.

Q. What Part of the *French* Fleet did the Van of the *British* Fleet fetch as the Wind was?

A. I think it was about the Fourth or Fifth of their Van?

Prosecutor asked,

Q. Whether, upon the whole, you do say or not, that the *French* Fleet edged down and brought on the Engagement?

A. The Van of their Fleet, by edging down a little, brought those Ships sooner into Action.

Q. How long and how far did the *Victory* continue to stand, after passing the sternmost of the *French* Fleet, before she wore and stood towards them again?

A. I believe it might be about twenty-five Minutes; I am not very certain.

Q. What Distance do you think she was when she did wear?

A. I am not able to determine.

Q. Did you observe the Signal for Battle being hauled down, whilst the Admiral was standing towards the Enemy, or from them?

A. I think it was a little before the *Victory* wore, but cannot charge my Memory.

Q. Did you observe the Admiral to shorten Sail, and unbend his Maintop-sail, whilst standing towards the Enemy?

A. I don't remember.

Q. Did you observe the Maintop-sail unbent at all?

A. I don't recollect I did.

Q. Did the Admiral wear again, and stand from the Enemy?

A. The Admiral wore and stood upon the Starboard Tack, being then ahead of the Enemy, on the same Tack with them.

Q. Did you at that Time, from those Motions of the Admiral, conclude that he did not intend to re-attack that Day?

A. No; I can't say that I did.

Court asked,

Q. When the *Victory* wore first, did all the Ships on the Starboard Tack, ahead of her, wear?

A. I do not know.

Q. Did the Admiral and the whole Fleet ahead of him wear by Signal the first Time of his wearing?

A. I don't know.

Q. Did the Admiral wear by Signal the second Time of his wearing?

A. Yes, I think he did.

Q. How long was the *Victory* on the Larboard Tack?

A. I don't justly recollect.

Q. Did you see any Ships on the Larboard Tack with her?

A. I think I did.

Q. Was it the whole, or only Part of the Fleet?

A. A Part of the Van.

Q. Do you think it would have been prudent in the Commander in Chief to have renewed the

E

Action,

Action, till the Ships that had been engaged were all put in a proper Condition to engage again, especially as Night was advancing?

A. I don't think I am a competent Judge.

Here he desired to refer to a former Question, which was consented to, and is in these Words:

Q. Did you at that Time, from those Motions of the Admiral, conclude that he did not intend to re-attack that Day?

A. I did not mean to draw that Conclusion.

Q. Where was the *Milford* when the Action began?

A. I was pretty well up to Windward, and astern of several of the Line of Battle Ships—I suppose Five or Six.

Q. Was you in your Station?

A. I don't know that I was out of my Station; there was no Line of Battle; we were all in Chace, and got in as we could. I was out of my Station, so far as was occasioned by our being on a general Chace.

Q. What Distance was the *Milford* from the Ships which first began the Action?

A. I believe about a Mile, but at this Distance of Time I cannot be certain.

Prosecutor asked,

Q. Did you observe the *French* Fleet to break up their Line of Battle, and to be in Confusion for some Time?

A. They seemed to be in Confusion a little after the Action ceased.

Q. Was this whilst the Admiral was standing towards them?

A. I think it was whilst the Admiral was on the Larboard Tack, standing towards them.

Q. Had the Vice-Admiral of the Red, before that Time, with his Division, doubled on the Rear of the Enemy, and was he to Windward of them?

A. I think he was on the Larboard Tack, to Windward of them.

Q. Could that Division have bore down on the Enemy, if the Admiral had advanced with the rest of the Fleet, and had kept the Signal for Battle flying?

A. As being to Windward, certainly they could have bore down.

Q. Or if the Admiral had made the Signal appointed by the Thirty-first Article of the Fighting Instructions, for Ships on the Starboard Tack in the Time of Battle to take the Lead, could that Division, from their Situation, have complied with that Signal?

The Witness was asked, if he knows that Article.

A. I have this Moment read it.

The Article was then read by the Judge Advocate, and the Question repeated.

A. To the best of my Judgment, the *Queen*, Sir Robert Harland's Ship, could have obeyed the Signal for bearing down, but I know not how many could have followed.

Prosecutor desired the Question and Answer preceding the last might be read. Being read by the Judge Advocate, the following Question was grounded thereon.

Q. If the Enemy had been so re-attacked by the Vice of the Red and his Division bearing down, and the Admiral advancing with the rest of the Fleet, would it not have prevented the Enemy from recovering from the Confusion they were in, and from forming a new Line of Battle?

A. I judge it might have prevented them from forming a Line so soon on the Starboard Tack, as they did, provided our Ships were then in Con-

dition to renew the Battle; but it cannot be supposed I am a competent Judge.

Q. Did not the *French* Fleet form a new Line of Battle without being molested?

A. I think they did.

The Prisoner admits it.

Q. After the Van and Center Divisions had passed the *French* Fleet, did you take notice of the Vice-Admiral of the Blue, and the Ships of his Division that remained engaged?

A. The Smoke was too thick for my clearly discerning them.

Q. As far as you did take notice of them, did they appear to you to be far separated from each other, or near together?

A. As far as I can recollect, as soon as they came out of Action, they seemed separated.

Q. Did you observe the *Formidable*, as soon as she came out of Action, wear, and lay her Head towards the *French* again, and lie to for some Time?

A. I cannot say that I saw it.

Q. Did you see her lay with her Head towards the Enemy soon after she came out of the Engagement, though you did not see her when she actually wore?

A. At this Distance of Time, I cannot say I recollect that Circumstance.

Q. Do you recollect seeing her soon after she came out of Action, when she was the only Ship between the Rear of the Enemy and the *Victory*?

A. I cannot say I do.

Q. Did you at any Time observe Three of the Enemy's Ships standing towards the *Formidable* soon after the Action?

A. It does not occur to me that I did.

Q. When the Admiral did wear to stand from the *French* Fleet, do you remember his passing under the *Formidable*'s Stern?

A. I do not.

Court asked,

Q. Did you ever say that the Admiral wore and stood from the *French* Fleet?

A. I have not said so.

Prosecutor asked,

Q. When the Admiral wore and stood on the starboard Tack, being then ahead of the Enemy, on the same Tack with them, whereabouts was the Vice-Admiral of the Blue at that Time?

A. Some Distance astern, and to Windward of the *Victory*.

Q. Did you observe the Signal being made for Ships to Windward to bear down?

A. I did not see the Signal thrown out.

Court asked,

Q. Did you see it after it was out?

A. I did not see it myself, that I recollect.

Prosecutor asked,

Q. Is it marked in the Log-Book?

A. It is not noted.

Q. Did the Admiral with the Fleet continue to stand on the starboard Tack till it was Night?

A. Yes, I think he did.

Q. Can you say what Sail he carried during that Time?

A. I think he had Topails and Foresail, but I am not very certain, for the greater Part of the Time.

Q. From the Time the Admiral wore and stood on the Starboard Tack, did the *French* Fleet begin to form into a Line of Battle on the same Tack?

A. I think it was about a Quarter of an Hour, to the best of my Recollection, that the *French* began to form their Line ahead, after Admiral

Keppel made the Signal to form the Line of Battle ahead on the Starboard Tack.

Q. Do you mean a Quarter of an Hour after the Admiral was on the Starboard Tack?

A. The Admiral had made the Signal to form the Line ahead before he wore and stood on the Starboard Tack.

Q. That Afternoon, whilst the Admiral was standing on the Starboard Tack, did the Vice-Admiral of the Red and his Division bear down into the Admiral's Wake, and at what Time?

A. At Thirty-five Minutes past Four Sir Robert Harland's Ship was in the Wake of Admiral Keppel, and most of the Ships of his Division, to the best of my Recollection.

Court asked,

Q. Do you recollect how many Ships Vice-Admiral Harland's Division consisted of?

A. Ten, I think.

Q. What Number do you think bore down with him?

A. I do not recollect.

Q. Where was the Vice-Admiral of the Blue and his Division at this Time?

A. They appeared to me at some Distance astern, and to Windward.

Q. Was the Signal out at this Time?

A. No.

Prosecutor asked,

Q. Was not the proper Station of the Vice-Admiral of the Red, according to the Signal for the Line of Battle then flying, on the Starboard Tack ahead of the Admiral?

A. The Signal was first made to form the Line of Battle ahead on the Larboard Tack; I do not recollect any Alteration of Signal. When they were on the Starboard Tack, about Half past Four, Admiral Keppel made my Signal to come within Hail, which I soon afterwards did, and received Orders from him to acquaint Sir Robert Harland, that it was his Direction he should make all the Sail he could as soon as possible, and lead the Fleet on the Starboard Tack, and to make the Signal for his own Division to come into his Wake.

Q. During that Afternoon, did you observe one of the Ships of the Admiral's own Division laying a considerable Distance astern of him, in his own Wake, upon which the Van of the French Fleet fired?

A. I do recollect the *Vengeance*, I think, Captain Clements.

Q. What Distance do you think that Ship was then astern of the *Victory*?

A. As near as I can recollect, about Two Miles.

Q. Was you at that Time under Apprehension of any Danger of her being cut off by the French Fleet?

A. I did at that Time express my Apprehension on the *Milford's* Quarter-deck that she would receive the Fire of the French Fleet, as they passed under her Lee, and thought it probable she might thereby have been destroyed, then laying in a very shattered Condition, and seemingly unable to make Sail.

Q. What Situation was you in during the Night of the 27th with respect to the *Victory*?

A. Some Distance astern and to Windward, as near my Station as I could keep.

Q. Did you observe the French Fleet to make any Signals that Night by Sky-rockets or otherwise?

A. I think I saw one Light, which seemed to come from the French Fleet.

Q. At what Hour?

A. Nearly about Ten.

Q. Could you at that Time see the Body of the Ships of the French Fleet?

A. Owing to the Darkness and Distance I was from them, I could not.

Q. Did you perceive them to bear away that Night?

A. I did not.

Court asked,

Q. When you saw that Light, what did you conclude from it?

A. I do not recollect forming any Conclusion.

Prosecutor asked,

Q. Were the French Fleet in Sight, or any Part of it, early the next Morning?

A. At Day-light some of the French Fleet appeared in Sight.

Q. How many?

A. I do not know the Number, there were several; I could easily discern Three or Four.

Q. Were those Three or Four near to the British Fleet?

A. I do not know the Distance they were at.

Q. Did they appear to you to be Line of Battle Ships or Frigates?

A. I do not recollect which.

Q. Did those Ships croud Sail from the British Fleet?

A. They seemed to be steering East from the British Fleet.

Q. Was the Signal made at this Time by any of our Ships for seeing a Number of strange Ships?

A. I did not see it myself.

Q. Did the British Fleet, or any Part, pursue the Ships that were in Sight?

A. I did not observe that any did.

Q. Did the Admiral wear and lay the Fleet early that Morning with their Heads to the Northward?

A. At about Eight o'Clock the Fleet wore and lay with their Heads to the Northward.

Q. What Latitude was you in at Noon on the 27th of July?

A. The Latitude of *Ushant*.

Q. At what Distance from *Ushant*?

A. Nearly about thirty-five Leagues by my Account.

Q. Is that according to your Reckoning made that Day, or is it corrected by Back-reckoning from seeing the Land afterwards?

A. It was from the daily Reckoning carried on.

Q. What was your Latitude at Noon of the 28th July?

A. About $48^{\circ} 29''$.

Q. How was the Wind in the Morning of that Day?

A. About West and by North.

The Prosecutor has no more Questions to ask this Witness.

Court asked,

Q. Whether during the Day of the Action to your Knowledge Admiral Keppel negligently performed the Duty imposed on him?

The Witness hesitating, and saying, he did not think himself competent to the Question, the Members retired. In a little Time they returned into Court, having agreed that the Question shall be repeated.

This Resolution was accordingly declared. But before the Question was repeated, the Prosecutor offered a Paper, humbly desiring that it might be read by the Judge Advocate, which the Court rejected, and refused to hear the Contents when offered to be read by the Prosecutor himself.

The

The Question was then repeated.

A. It is a Question of the greatest Importance, and is far above me to be able to determine; I have said before in other Cases, where I have been asked, that I did not think myself competent to judge. It appears to me, that it comes before this Court to judge from the Facts given in Evidence. Admiral Keppel is a very brave and gallant Officer, and it does not become me to presume to give my opinion, which can be of very little weight.

Court asked,

Q. You can say, Yes or No?

A. I say, as I have said before, I do not think it a Question to ask me, who am so young in the Service. I exceedingly respect the Character of the worthy Gentleman in Question, and think him a most gallant Man; this I speak from my Heart; nobody entertains a higher Opinion of that Gentleman than I do.

Then the Prisoner asks,

Q. Had the Frigates or Fireships any Men killed by the Fire of the Enemy on the Day of the Action?

A. I had none, nor do I know if any of the rest of the Frigates or the Fire-ships had.

Q. Was the Admiral going large or by the Wind when the Signal referred to in the 31st Article of the Fighting Instructions is alleged to have been proper to be made?

A. I do not recollect.

Q. Do you recollect the Admiral being on the Larboard Tack with his Head towards the Enemy?

A. Yes.

Q. Inform the Court whether the Admiral did at any Time when he was on the Larboard Tack lead large.

A. I cannot answer for certain whether he did or not.

Q. Where was you when the Admiral laid his Head towards the Enemy?

He was here asked, if the Minutes in his Hand were taken at the Time.

He referred to the Declaration he gave on Saturday, and then answered.

A. I do not recollect the immediate Time the Admiral wore; as far as I can recollect, I was some Distance astern, and to Leeward.

Q. Whether did you lead large at that Time, or keep to the Wind?

A. As far as I can recollect I was going nearly on a Wind on the Starboard Tack.

Q. Were the French Fleet forming their Line near the Time the Admiral first made the Signal for the Line after wearing, and laying his Head towards the Enemy.

A. To the best of my Recollection the Signal was made by Admiral Keppel to form a Line before the French had formed their Line.

Q. Then you do not recollect they were forming their Line; I mean to be understood drawing

their One, Two, and Three Ships out of that Body of Ships at the Time you have described them to be in Confusion?

A. Soon after that I did observe them forming a Line on the Starboard Tack to the best of my Recollection.

Q. Soon after what Time?

A. Soon after they were in that Confusion.

Q. What was that Confusion? Was their Fleet at that Time at all dispersed?

A. No; the greater Part of them were pretty close together.

Q. Whether the English Fleet were not dispersed while the Victory's Head was towards the French?

A. I think they were.

Q. Did you while the Victory was on the Larboard Tack, and you on the Starboard, see any one Ship in the Line of Battle ahead or astern of the Victory conformable to the Signal then flying?

A. I cannot say that I observed it.

Q. How far was the Distance of Sir Robert Harland's Flag from the Milford at the Time you have described it; when you were questioned relative to the 31st Article of the Fighting Instructions?

A. He was at some Distance, but I do not recollect.

Q. Can you say how far Sir Robert Harland was from the French Fleet?

A. No; I cannot.

Q. If you do not now know the Distance Sir Robert Harland was from the French Fleet, what Reason had you for saying his leading large might have prevented the French from forming their Line again so soon?

A. Because, though I am not able to recollect the Distance; yet, still, had Sir Robert Harland, with his Division, and Admiral Keppel's Division, bore down, provided they were in a Condition proper to attack, I think it might have tended to have prevented their forming their Line so soon on the Starboard Tack.

Q. How many Ships had Sir Robert Harland with him of his Division at this Time?

A. I cannot recollect.

Q. You have just before said, you did not know that Admiral Keppel had any Ships formed in a Line of Battle ahead or astern of him. Did you see any Ships in a Situation, except the Victory, I would add the Formidable too, looking to the Enemy, that could give immediate Support or Assistance to the Vice-Admiral of the Red, if the Signal had been made for him to bear down?

A. I do not recollect.

Q. Whether there were any other Ships?

A. Not that I recollect.

The Witness, at the Prisoner's Request, was ordered to attend again To-morrow.

Adjourned, being past Four o'Clock, till To-morrow at Ten o'Clock.

F I F T H D A Y.

TUESDAY, the 12th of JANUARY, 1779.

COURT met according to Adjournment.
Prisoner brought in, and Audience admitted.

Sir William Burnaby called in again.

Prisoner asked,

Q. Did you receive any Directions from me in the Afternoon of the 27th July?

A. Yes, I did.

Q. At what Time?

A. A little past Half past Four o'Clock.

Q. Please to relate what those Directions were?

A. The Orders I received from Admiral Keppel were, To go, without Loss of Time, to Sir Robert Harland, and to acquaint him, the Admiral desired he would make what Sail he could immediately, and lead the Fleet upon the Starboard Tack, and to make the Signal for his Division to follow, and to come into his Wake.

Q. Did you proceed directly to Vice-Admiral Harland, and deliver the Admiral's Directions?

A. Yes, without Loss of Time.

Q. Was Sir Robert Harland, with his Division, directly in the Admiral's Wake, or a little to Windward at this Time?

A. I think they were nearly in his Wake, but rather to Windward.

Q. When you spoke to the Vice-Admiral of the Red, can you acquaint the Court how many Ships there were of his Division ahead and astern of him?

A. I do not remember.

Q. Did you, when you was going to Sir Robert Harland, see the Vice-Admiral of the Blue, and several of his Division with him?

A. I do not recollect, as I was going from the Admiral to Sir Robert Harland, that I then observed it; being prevented from the View of those Ships by passing under the Lee of some of our Ships.

Q. Do you mean they were to Leeward of Sir Robert Harland?

A. No, I don't recollect they were.

Q. Then it was Sir Robert Harland's being to Leeward of them prevented your seeing them?

A. It was—there were Ships of Admiral Keppel's and Sir Robert Harland's Division which prevented the View.

Q. Did the Vice of the Red, in making Sail, in Obedience to my Orders, pass the Leeward of the Vice-Admiral of the Blue?

A. Yes, I believe he did.

Q. Did the Vice-Admiral of the Red, in getting into his Station ahead, pass to Windward of the Admiral?

A. To the best of my Recollection he did.

Q. You have described the dangerous Situation you observed the *Vengeance* to be in, Two Miles astern of the *Victory*, after the *English* Fleet were standing on the Starboard Tack, at what Hour was this?

A. I think near about Five o'Clock in the Afternoon.

Q. Was, at this Time, Sir Robert Harland making Sail in Obedience to my Orders?

A. I think he was.

Q. Was the *Milford*, at this Time, as near to the *Victory* as she was to the *Vengeance*?

A. I think I was much nearer the *Vengeance* than the *Victory*.

Q. After Sir Robert Harland had made Sail, at this Time, what Ships were in the Admiral's Wake, astern of him in the Line of Battle?

A. I neither recollect the Number, or what Ships they were.

Court asked,

Q. Do you allow there were any?

A. Yes, as I have before observed.

Prisoner asked,

Q. Were there Two?

A. Yes, and more.

Q. At this Time?

A. I think so.

Q. Was it a little before Five o'Clock?

A. I said about Five.

Q. Then, about Five o'Clock, you think there were some Ships in the Line of Battle astern of the Admiral?

A. I think there were.

Q. Was the Vice Admiral of the Blue One of those Ships?

A. I have before said, I judged it to be of Admiral Keppel's, or Sir Robert Harland's Division.

Q. When Sir Robert Harland's Ship interrupted your View no longer, where was the Vice-Admiral of the Blue?

A. I think he was astern, and pretty well to Windward.

Q. Was the Vice-Admiral of the Red, when he was astern, and a little to Windward, closed in the Line with the Admiral's Rear?

A. I said before, she was a little to Windward of the Wake of Admiral Keppel's Ship the *Victory*, and closed very near to some of them.

Q. Was it at this Time when you was to Leeward, that the Vice-Admiral of the Red was closed in, with the Ships astern of the *Victory*, that the Ships of the Vice-Admiral of the Red intercepted your View of the Vice-Admiral of the Blue?

A. I before observed, it was in passing from the *Victory* to the *Queen* that my View was intercepted, but by what Ship I did not point out.

Q. When you hailed the *Queen*, did you see the Vice-Admiral of the Blue?

A. I cannot say I did, my Attention being otherwise taken up.

Q. At this Time, after speaking to the Vice-Admiral of the Red, and he had made Sail, was the Signal for the Line, or a blue Flag, or either of them, flying at the Admiral's Mizzen-peak?

A. I neither recollect now, nor did I Yesterday, when I was asked that Question, when I signified, I had not observed any Change of Signal for forming the Line on the Starboard Tack.

Q. If the Vice-Admiral of the Blue at this Time, as soon as the Vice-Admiral of the Red had moved from it, had led his Division into the Admiral's Wake, would it not have given certain Security to the *Vengeance*, described in such Danger, from the Place where the Vice-Admiral of the Blue had been described to be?

A. I should judge so, were they in proper Condition to go into Action.

Court asked,

Q. Did you know at that Time, whether they

were in a proper Condition to go into Action or not?

A. No, I did not.

Prisoner asked,

Q. From Three o'Clock in the Afternoon of this Day (the 27th of July) till Six o'Clock, did you in any Part of this Time, observe any of the *English* Fleet much to Leeward before the Beam, and on the Lee Bow of the *Victory*, immediately after we got upon the Starboard Tack?

A. I do not recollect there were.

Q. You have said in the former Part of your Evidence, that the *French* Fleet were seen on the 24th, by Log. Did I call you that Afternoon within Hail.

A. Yes.

Q. What Orders did I give you?

A. The Admiral desired me to make Sail, and to keep ahead of our Fleet, between us and the *French*.

Q. Did you discover any Motion in the *French* Fleet that Night, that enabled you to make a positive Signal?

A. No. I did not.

Q. Did I that Afternoon pursue the *French* in a Line of Battle by Signal, by Point of the Compass, and use Endeavours to close in with them?

A. I recollect your carrying a Press of Sail on the Larboard Tack, standing towards the *French* Fleet, the Van of our Fleet being then in a tolerable Line of Battle.

Q. Was the Vice Admiral of the Red and his Division a good Way astern?

A. I do not recollect what Distance they were.

Q. But not closed with the Center Division as the Vice Admiral of the Blue was?

A. It did not appear to me they were.

Q. Did I pursue the *French* Fleet with a Press of Sail, conformable to the worst sailing Ships with me, to close and get up to the *French* Fleet, from the 24th in the Morning till the Moment I brought them to Battle, except the Two Times I made the Signal for a Line of Battle after the 24th in the Morning?

But the Prisoner, before putting this Question, desired the Witness might be asked,

Q. Whether you remember I made the Signal for the Line of Battle ahead on the 24th, between the Hours of Five and Eight in the Morning?

A. I think I recollect it.

Q. Also—Do you remember in the Afternoon of that Day, I made the Signal for the Line of Battle?

A. Yes, it was made about Six in the Afternoon of 25th July, by Log.

Then the former Question was put. Did I pursue, &c.

A. You always carried a Press of Sail, and gave every Proof, in my Judgment, of your very great Desire to bring them to Battle.

Prosecutor here desires to ask a few Questions.

Q. You have been asked relative to the Time you took Notice of the Situation of the *Vengeance*, I desire you will inform the Court of it, was it not after you had spoke to the *Queen*?

A. Yes, it was.

Q. After you had spoke to the *Queen*, did you make a Stretch on the Larboard Tack, or did you stand on the Starboard Tack, the same Way the Fleet was standing?

A. I spoke to the *Queen* when standing on the Larboard Tack, and continued so for some Time, but cannot recollect how long, and then put about and stood on the Starboard Tack, passing along to the Windward of several of our Ships

that were then forming, or tolerably well formed, in a Line of Battle.

Q. By standing further from the Admiral than the *Queen* was, did that enable you to make this Observation of the Situation of the *Vengeance*, because it was going farther off?

A. It did.

Q. Is there not an appointed Signal when the Admiral would have any particular Ships stay by disabled Ships?

Admitted by the Prisoner.

A. Yes.

Q. Was any such Signal made at the Time?

A. I neither saw or knew of any.

Q. You have informed the Court, that the Vice-Admiral of the Blue was astern and well to the Windward of the Admiral's Wake; did you take Notice at that Time, of the Situation of the *Formidable*, with respect to her Sails and Rigging?

A. I do not recollect the immediate Condition of her, but as far as I remember, she seemed disabled in her Sails and Rigging.

Q. Did she appear to be equally able to carry Sail with the *Victory* at that Time?

A. No, I do not think she was.

Q. Did not the *Victory* carry her Topsail hoisted entire, and her Foresail at that Time?

A. I have before said, that I believe the *Victory*, during the greater part of the Afternoon, had carried her Topsails and Foresails, but whether they were whole Topsails I do not recollect.

Court asked,

Q. Did you observe the Vice Admiral of the Blue make any Signal to the Admiral of his not being able to keep him Company?

A. I did not.

Prosecutor asked,

Q. Is there any such appointed Signal?

A. I think there is.

Q. Did not the *Victory* always outfail the *Formidable* with equal Sail?

A. According to the Observation I made on the Rate of their sailing, I think she did.

Q. You have observed the *Formidable* was in a disabled Condition, and have described the Sail the *Victory* did carry, do you suppose the Distance between them was occasioned by the *Victory's* sailing from her, or by any Neglect on the Part of the *Formidable*?

A. The little Sail the *Formidable* carried after the Action, could not possibly enable her to keep Way with the *Victory*.

Prisoner asked,

Q. When you passed upon the Larboard Tack, if the Vice-Admiral of the Blue had any Message to send to me, by you, was it not in your Power, within a very little Time, to have gone to him to receive his Orders?

A. Had a Signal been made by the Vice-Admiral of the Blue, to have spoken with me, I believe I could have soon been with him.

Prosecutor asks,

Q. Was the Condition of the *Formidable* very apparent at that Time?

A. As I before said, she appeared to be disabled.

Prisoner asked,

Q. Was her Topmast, Topgallantmast, or Lower-yard, or Topsail-yard, carried away?

Admitted by the Prosecutor, that all her Masts and Yards were standing.

Witness withdrew.

Captain

Captain Robert Digby, of the Ramillies, sworn.

Prosecutor asked,

Q. Do you remember the *British* Fleet bringing to in the Evening of the 23d of July on the Larboard Tack, about Eight o'Clock?

Admitted by the Prisoner, the Fleet did bring to at this Time.

Q. Was the *French* Fleet at that Time to Leeward of the *British* Fleet, standing to the Southward on the Starboard Tack in a Line of Battle, or nearly so, as it appeared to you?

A. I recollect very well the *English* Fleet bringing to, but I cannot say exactly at what Time: I recollect seeing the *French* Fleet passing to Leeward of us, and Part of them in a Line of Battle; whether they were all so or not, I cannot say.

Q. Do you mean to say, they were on the Starboard Tack?

A. Yes.

Q. Explain whether that was the Situation at the Close of the Evening?

A. I cannot say whether our Fleet was brought to before the Close of the Evening, but that was their Situation.

Q. How was the Wind?

A. By my Log, W. by N.

Q. How did *Ushant* bear at Noon on the 23d?

A. I do not recollect.

Q. Have you no Account of it?

A. I have none about me.

Q. When the *French* Fleet were to Leeward of the *British* Fleet, with the Starboard Tacks on board, with the Wind at West, was not *Ushant* then under their Lee?

A. It was.

Q. Had you an Opportunity of seeing any Part of the *French* Fleet at any Time during that Night?

A. It was very dark and blowing, and I saw none of the *French* Ships, but I saw some false Fires made.

Q. What Situation was the *French* Fleet in the next Morning, from the *British* Fleet?

A. I think they were to the Northward.

Q. A little or a considerable Distance?

A. A considerable Distance.

Q. Had the *French* Admiral intended avoiding coming to an Engagement, would he not have continued to stand on the Starboard Tack during that Night towards *Brest*?

A. That is Matter of Opinion.

Q. I should be obliged for your Opinion.

The Court agreed, he may give Opinion, as well as speak to Facts.

A. I beg not to give my Opinion.

Q. If the *French* Admiral had continued to stand on that Tack all that Night, with the Wind blowing strong, as you have described, would they not the next Morning have been near to the Port of *Brest*, and at a great Distance from the *British* Fleet, who were laying the whole Night with their Heads to the Northward?

A. They would have been nearer the Port of *Brest*, and they would have been farther from the *English* Fleet than they were.

Q. But, on the contrary, did not the *French* Fleet gain the Wind of the *British* Fleet the next Morning, and thereby place it between them and *Brest*?

A. They were to Windward the next Morning, and of course we were between them and *Brest*.

Q. Do you consider those Motions of the *French*

Admiral as Marks of his Intention to avoid coming to an Engagement, or of his Intention to do so when there should be a proper Opportunity?

A. I did imagine at that Time the *French* Fleet intended to attack us.

Q. During the following Day, the 24th, did it appear to you that the *French* were endeavouring to keep their Ships in a Line of Battle?

A. Yes.

Q. You have said it blew hard in the Night—What Kind of Weather and Sea were there the next Day?

A. As well as I can recollect, it was more moderate.

Q. Do you recollect, that during the 25th or 26th it blew fresh and squally—or how was the Weather on those Days?

A. I cannot be certain as to the exact Time, but it blew fresh and squally Part of those Days.

Q. From your Recollection of its blowing fresh and squally Part of those Days, was it attended with such a Sea and Swell as usual to such Weather?

A. There was a Swell, but I do not recollect any Thing particular one Way or the other.

Q. From your Recollection of the Wind and Weather, and the Sea, from your Judgment, could Ships have fought their Lee Lower-deck Guns?

A. As well as I recollect, I could not have fought all mine most Part of the Time, but I cannot say as to the whole Time.

Q. If the *French* Fleet had bore down and attacked the *British* Fleet when such Ships as the *Ramillies* could not fight the whole of their Lee Lower-deck Guns, would it not have been very disadvantageous to the *French* Fleet to have attacked under those Circumstances?

A. That seems Matter of Opinion, and depends upon their Ships.

Q. Did it appear to you during those Days, that the *French* endeavoured to preserve their Fleet in a Line of Battle, as well as the Wind and Weather would permit, preserving their Distance from our Fleet?

A. It did.

Q. At Times when the Weather moderated, did it appear to you, that the *French* Admiral crowded Sail in order to get away, or that he made Sail and shortened Sail occasionally, for the better perfecting his Line of Battle?

A. I saw many of the Ships shorten Sail and make Sail at different Times—but after the first Day I always imagined they wished to avoid us.

Court asked,

Q. When you saw the *French* Fleet make Sail and shorten Sail, in order to form their Line, at the Time the Prosecutor has asked, did you see the *French* Fleet bring to, in order for the *British* Fleet to come up to them?

A. I do not recollect ever seeing the Whole of the *French* Fleet brought to at any Part of that Time?

Q. Did the *British* Admiral and the Fleet endeavour to get to Windward of the *French* Fleet while they were forming a Line?

Prosecutor admits the Fact.

Q. In the Ship you commanded that Day, did you or could you open your Weather-ports on the Lower-deck, and have fought those Guns, if the *French* had brought you to Action?

A. Frequently I could not.

Q. Were those Ports open any Part of either of those Days?

A. I believe some few of them were.

Prosecutor

Prosecutor asked,

Q. Could you not have fought your Weather-guns when you could not have fought your Lee-guns?

A. I believe I might more Weather-guns than Lee-guns.

Q. Has not a Ship or Fleet, which can fight more of their Weather than Lee-guns, a great Advantage over the other?

A. The one that can fight most Guns has most Advantage.

Q. In the Morning of the 27th was the *British* Fleet much extended or scattered, or dispersed?

A. Much about the same it had been the Day before in the Morning, before any Signal was made.

Q. Inform the Court how they were the Day before.

A. As well as I recollect, they were not in the same Order (I do not mean Disorder), one Way or the other; but with regard to Sailing, they were not in the same Sort of Order as when there never had been a Line of Battle; the Divisions were separated.

Q. Do you remember a Signal made that Morning from the *Victory* for several Ships of the Vice of the Blue's Division to chace to Windward?

A. I do.

Q. Did that Signal cause those Ships to be separated from their Flag, and that Part of the Fleet to be more dispersed than they were before?

A. Certainly.

Court asked,

Q. Was you one of those Ships?

A. No.

Q. Do you recollect how many there were?

A. I think there were four.

Q. At what Time did the *British* Fleet tack altogether by Signal to stand towards the *French* Fleet?

A. I cannot be accurate in Point of Time, I think it was between Nine and Ten.

Q. Did the Admiral make any Signal for the *British* Fleet to form into a Line of Battle that Day before the Engagement began.

Prisoner admitted he made no Signal to form the Line of Battle in the Morning of the 27th before he had closed with, engaged, and passed the Rear of the French Fleet.

The Witness desired to explain himself upon a former Question.

I only meant to say, that the Fleet was not in the same Order as commonly they are when there has been no Line of Battle, there had been a Line of Battle, and after that Line of Battle the Division sailed in rather a different Form; one Division kept ahead, and the other astern, to be more ready.

Prosecutor asked,

Q. More ready for what?

A. I suppose for forming a Line.

Q. Were not several of the Ships in each of the Divisions considerably to Windward, and others considerably to Leeward of their respective Flags?

A. I was too far from the Red Division to judge with regard to the Vice-Admiral of the Blue's Division (meaning at Eleven o'Clock) those Ships whose Signals were made to chace, were considerably to Windward. As I was to Windward myself, I could not judge of the Distances of those to Leeward.

Q. From the Description you have given, was not the Fleet scattered and dispersed?

A. I do not know what dispersed means, Part of them were separated.

Q. Did the Admiral make the Signal for Battle while the Ships were as before described at Eleven o'Clock?

A. I cannot say exactly as to Time, but I think it was about Eleven o'Clock. The Admiral made the Signal for Battle between Eleven and Twelve o'Clock.

Court asked,

Q. Did he make the Signal before or after the Enemy fired?

A. After.

Q. At the Time that you are speaking of, were the Three Divisions of the *British* Fleet sailing in the usual Order that Fleets sail when not in Line of Battle.

A. I think they were not.

Q. Were the several Divisions in such a Situation as to form a Line sooner than in a common Way of Sailing?

A. I think they were.

Prosecutor asked,

Q. You say that the whole of the Fleet were in such a Situation as to form a Line sooner than in a common Way of Sailing, if the Signal for the Line of Battle had been made instead of sending out Ships of the Vice-Admiral of the Blue's Division to chace, which separated that Part of the Fleet; might not the *British* Fleet have been formed into a Line of Battle before the French attacked them?

A. There was Time for that, if the Signal for the Line of Battle had been made when the Signal for those Ships to chace was.

Q. Did the *French* Fleet by attacking us when we were not in a Line of Battle, but under the Circumstances before described, render it impossible for our Captains to engage Ship to Ship, or to bring on a general Engagement?

A. Certainly.

Q. When you proceeded along the *French* Fleet and engaged, did they appear to you to be formed in a Line of Battle?

A. They did; but a Part of them were not very regular.

Q. Do you mean not regular in point of Distance between each other, though in a Line with each other?

A. Part of them not very regular one way or the other; I mean they were not regular in point of Line, nor in point of Distance.

Q. Whilst you were proceeding along the *French* Line and engaged, was you at any Time interrupted in your Fire by the Irregularity of our Ships not being in a Line by other Ships falling in your Way?

A. No; I was not.

Q. Were any Shot fired over you from any of our own Ships?

A. I believe not.

Q. When you passed the Rear of the Enemy's Fleet, were you ahead or astern of the *Victory*?

A. Ahead of the *Victory*.

Q. How long and how far did the *Victory* continue to stand after she had passed the sternmost Ship of the Enemy's Line, before she wore to stand towards them again?

A. I was so situated that I could not be a judge of the Distance, and I was so much employed that I did not see her at the Time she wore or tacked.

Q. The first Time when you did observe that the *Victory* had wore, and was on the Larboard Tack, at what Distance then do you think she was from the *French* Fleet?

A. I said before I was so situated, it was impossible for me to be a judge of the Distance at all.

Q. Did

Q. Did you see her wear a second Time when she came on the Starboard Tack again?

A. I did see her about that Time.

Q. Can you judge of her Distance at that Time from the *French* Fleet?

A. At that Time the Body of the *English* Fleet was between me and the *French* Fleet, and therefore I could not be a Judge of the Distance.

Q. Which Way was your Ship's Head at that Time?

A. I had wore once before, and was just wearing at that Time.

Q. Can you mention how many, if any Ships were laying with their Heads to the Southward at the Time when the Admiral was wearing to lay his Head again to the Southward.

A. The Body of our Fleet appeared to me at that Time in a Cluster; it is therefore impossible.

Q. Did the *Victory* appear to be in that Cluster?

A. She did, though not in the thickest Part of it.

Q. Did you observe when the Signal for Battle was hauled down?

A. I did not.

Q. When did you first observe that it was down?

A. I was so extremely employed that I did not observe it myself, nor can I recollect when I was first told of it.

Q. Did you observe the Admiral unbend his Maintop-sail?

A. I did not.

Q. Did you take Notice of its being unbent at any Time?

A. I have mentioned before, I was so much employed I had not time to look myself, and did not hear of it till afterwards.

Q. You have said, you took Notice of the Admiral about the Time when he wore a second Time, was that the Time when the *British* Fleet was in a Cluster as before described?

A. They appeared to me in a Cluster from my Position at that Time.

Q. Did you observe the *French* Fleet to break up their Line of Battle?

A. I was in that Position I could not see it, the *British* Fleet being between me and them?

Q. When did you first take Notice of them after all firing ceased?

A. Not till they had got to Leeward of our Fleet, and were standing to the Southward.

Q. Did you take Notice where the Vice-Admiral of the Red with his Division was, about the Time when the Admiral wore a second Time, and stood to the Southward?

A. They were to Windward of the *English* Fleet, which prevented me from seeing them.

Q. From seeing them at all?

A. I could not distinguish them.

Q. When the Admiral wore a second Time, did you see the Vice-Admiral of the Blue?

A. I cannot be accurate in Point of Time, I saw the Vice-Admiral of the Blue not a great While before.

Q. What was the *Formidable's* Situation with respect to the *Victory*?

A. As they both made a Part of the Fleet, I could not judge of the Distance; but the Vice-Admiral of the Blue appeared to be to Leeward.

Q. Did she appear at that Time near to the *Victory*?

A. I have mentioned before I could not judge of the Distance.

Q. As you are not able to speak to the Time the *Victory* continued to stand beyond the *French*

Fleet, or ascertain the Distance, can you estimate the Distance that your own Ship was from the *French* Fleet before you wore yourself?

A. I cannot, but I know I was obliged to stand a great Way beyond the *Victory*.

Q. Was your Ship to Windward of the *Victory* within Half an Hour after she wore and stood to the Southward the last Time?

A. I was a great Way to Leeward.

Q. When did you first get to Windward of the *Victory*?

A. Not till late in the Evening.

Q. Did you pass ahead or astern of the Admiral when you went to Windward?

A. I do not recollect.

Q. What Time in the Evening?

A. About Seven o'Clock I believe.

Q. Did you observe what Sail the *Victory* had set about that Time?

A. I do not recollect.

Q. Did you tack or wear after you had passed to Windward, and stand the same Way he did?

A. I stood on further to Windward in order to wear, my Foremast was so much wounded I was afraid to tack.

Q. After the *Victory* had wore to stand to the Southward the Time last mentioned, did she appear to you to keep her Wind, or to sail large?

A. The Fleet appeared to me to be going on a Wind, but I did not take particular Notice of the *Victory*.

Q. Did you at any Time look at her and notice the Sail she had set, or Signals flying?

A. I did several Times, but cannot recollect the particular Times; I saw particularly my own Signal to get into my Station; there were others, but I cannot recollect them.

Q. But as to the Sails set?

A. I cannot speak with Certainty, but think she had her Foresail and Topsails.

Q. Do you recollect whether any Staysails were set, or the Jib?

A. I do not indeed.

Q. Do you recollect what Sail you carried yourself to keep Way with her?

A. I have mentioned before, that I stood on to Windward of the *Victory*, as I was afraid of my Foremast, and after that I regulated my Sail by the Vice-Admiral of my own Division.

Q. Was the Vice-Admiral of your Division astern of you after you wore and laid your Head to to the Southward?

A. Not after I wore—I wore to get into my Station—The Signal was hauled down before.

Q. What Signal do you mean?

A. The Signal for the Line of Battle, and my Signal likewise to get into my Station.

Q. The Signal for the Line of Battle, and your particular Signal, being hauled down, you then proceeded to take your Station with respect to the Vice-Admiral of the Blue?

A. Not for that Reason only.

Q. Was not your Station then astern of the Vice-Admiral of the Blue?

A. It was.

Q. What was the Distance you esteemed the Vice-Admiral of the Blue from the *Victory* at the Time you went to take your Station astern of her?

A. I cannot speak accurately, as the Distance varied; but I think it might be about a Mile.

Q. Was that astern of the *Victory*, somewhat to Windward of her Wake, or how?

A. Both astern and to Windward of her Wake.

Q. Did you observe any Signal made in the Night by the *French* Fleet?

G

A. I

A. I did not observe it myself, but some were observed from my Ship.

Prisoner admitted that Rockets were fired from some of the French Fleet.

Q. Did you observe the French Fleet to bear away during the Night?

A. No.

Q. At what Hour was the Report made to you of those Signals having been made?

A. I think it was about Eleven or Twelve.

Q. How many of the French Fleet were in Sight the next Morning?

A. I saw but Three.

Q. Were those Three near the British Fleet, and to Leeward?

A. They were to Leeward, not very near.

Q. Was not One of them very near the Rear of our Fleet?

A. I should think not nearer than Four or Five Miles.

Q. Did they appear to you to be Line of Battle Ships or Frigates?

A. Line of Battle Ships.

Q. Were any other Part of the French Fleet seen from your Mast Head?

A. There were not that I have heard of.

Q. Do you know of any Signal being made by any Ship in the Fleet of seeing them?

A. I did not know that Day that they were seen.

Q. Did the Fleet, or any Part of them, chase those Three Ships?

A. There were Signals made for Two or Three Ships, I cannot recollect which, to chase.

Q. Did they chase?

A. I believe some of them made Sail.

Q. Were not the Signals hauled in, before they did make Sail?

A. I did not see them all make Sail before the Signal was hauled in.

Q. Can you inform the Court what Latitude you was in at Noon on the 27th?

A. I believe it was $48^{\circ} 22'$.

Q. Can you recollect the Distance you was from *Ushant*?

A. I cannot exactly.

Q. To the best of your Memory, by your Reckoning, at that Time?

A. Between Thirty and Forty Leagues—I should likewise add, we were out of our Reckoning about that Time, by other Reckonings.

Q. How was the Wind in the Morning of the 28th?

Called for his Log Book.

A. W. N. W.

Q. What Sort of Weather was it?

A. It was more moderate than it had been.

Q. Of how many Ships of the Line was it supposed the French Fleet consisted?

A. As far as I could judge, from Appearance, there were, on the Day of Action, Twenty-nine of the Line.

Q. Of how many Ships of the Line did the British Fleet consist?

A. I think Thirty.

Court asked,

Q. Do you count the Number of the French Line?

A. I did; and, from their Appearance, I thought they were Twenty-nine of the Line.

Prosecutor asked,

Q. In that Number do you include Two supposed to be of Fifty Guns?

A. There were Forty-one Sail in all—Twenty-nine of which appeared considerably larger than the others, and some of the rest larger than others.

Q. Do you know of what Force the French Fleet was?

A. I do not exactly.

The First Article in the Charge read by the Judge Advocate, to shew the Number of Ships mentioned therein.

Court asked,

Q. Can you acquaint the the Court of any Instance within your own Knowledge, during the Time the British and French Fleets were in Action, that Admiral Keppel neglected to do his utmost to burn, sink, and destroy the Enemy, having it in his Power so to do, or negligently performed the Duty imposed on him?

A. I have always had the greatest Esteem and the greatest Opinion of Admiral Keppel as an Officer; I have so still; but I have been giving Evidence upon Facts, and an Answer to that Question would be judging upon them, which I have no Right to do.

Q. Did you that Day see him run away from the French Fleet?

A. No.

Adjourned, being Forty Minutes past Three o'Clock, till Ten o'Clock To-morrow.

SIXTH DAY.

WEDNESDAY, the 13th of JANUARY, 1779.

COURT met according to Adjournment.
Prisoner brought in and Audience admitted.

Captain Digby called in again.

Court asked,

Q. Had not the Van and Center of the English Fleet been engaged with the French as they passed them?

A. A great Part of them.

Q. Was the Ship you commanded engaged?

A. Yes.

Q. What was the Condition of the Ship you commanded after you left off engaging?

A. Our Maintop-sail was cut to Pieces, our running and standing Rigging very much cut; so

that we were not able to wear for some Time; our Foremast wounded in several Places, particularly in one, it was cut full Half through, and several of the other Masts and Yards were wounded, Mainyard and Mainmast particularly.

Q. In the Situation you have described your Ship to be, was it such as you could renew the Attack, if the Admiral had tacked immediately after the Enemy.

A. I do not think my Ship was in a Condition to seek an Attack for a good while afterwards.

Q. How long was it after you was engaged before your Ship was in proper Condition to renew the Fight, supposing the Admiral had judged it proper so to do?

A. My Foremast was so much cut, that I was afraid

afraid of its going over the Side; but if any Ships had come near me, I should have been in a Condition.

He afterwards explained himself as follows:

I think there is a vast deal of Difference between being ready to renew an Attack of an Enemy, and being in a Condition, in case the Enemy was near me, to renew the Fight. I was a considerable Way to Leeward. It was near Seven o'Clock before I was able to tack; the Lee-leech of my Main-sail being so cut, that I could not set it upon the other Tack before that Time, which was necessary on account of my being so far to Leeward.

Q. After the Engagement was over, and the Admiral had laid his Head towards the Enemy on that Tack, was you not to have led?

This Question was not put.

Q. Did you tack?

A. I did.

The Prosecutor here offered a Question. But the Prisoner objected to the Prosecutor asking fresh Questions; he having said he had no more to ask.

Prosecutor said his Questions arise from Matter out of those just asked by the Court, since he said he had no more to ask. It was agreed to receive the Prisoner's Questions first.

Prisoner asked,

Q. What Force did you discover in the Afternoon of the 23d the French Fleet to be composed of, and how far were they from you whilst the Day permitted you to count them; I mean Line of Battle Ships?

A. I could not count them; the Weather was so thick it prevented me.

Q. How far were the Vice-Admiral of the Red and his Division from you at this Period; the latest Period in the Day?

A. As the Fleet had been endeavouring to get into a Line of Battle, and were nearly so, and as I was, though not got into my Station in Point of Distance, nearly so, that will determine my Distance better than I can.

Q. You do not understand my Question. Was the Vice-Admiral of the Red closed in his station in a Line of Battle?

A. I am not sure that I saw him at that Time, as the Weather was very thick.

Q. Captain Digby is an Officer whose Rank in the Service intitles him to large Command, and he has had such Command:—Should you, with a Squadron of Ships of the Line of Battle under your Command, in the Situation the French have been described by you to be during the 24th, 25th, 26th, and 27th, relative to Weather, Wind, and Sea, and seeing an Enemy to Leeward of equal Force, have hesitated one Moment to lead the Squadron down to Battle, on account of such Weather, Wind, and Sea, as before described?

A. I believe I should have attacked them.

Q. I put a pretty close Question; I ask whether you would have hesitated one Moment?

A. It is pretty near the same Answer; I think I should not have hesitated.

Q. Can you inform the Court of the relative Situation of the English and French Fleets at Day-light of 27th July?

A. As well as I recollect, we were both on the Larboard Tack; the French Fleet about six, seven, or eight Miles to Windward of me.

Q. What was the Situation of the Vice-Admiral of the Blue and his Division with respect to the Victory at that Time?

A. They appeared to me on the Victory's Lee-

bow; I am not sure that I took Notice at that Period.

Q. At what Distance do you think they were from the Victory?

A. At that Period I really cannot recollect with Exactness.

Q. Can you recollect what Sail they were under?

A. I cannot indeed.

Q. At this Time how was you in the Ramillies yourself situated, relative to the Vice-Admiral of the Blue and the Victory?

A. I have said I could not recollect at that Period exactly; but I remember to have ordered my Officer to keep upon the Vice-Admiral of the Blue's Weather-beam a Mile at least; and when I did take Notice, he had kept still farther.

Q. When did you take Notice; what Hour of the Day was it, and where was you then with respect to the Victory?

A. Upon the Signal being made for the Ships to chace in the Morning to Windward, I set my Stay-sails; and the Period that strikes me strongest was just after we tacked, between Eight and Nine, I believe. I was then a little upon the Victory's Weather-quarter.

Q. Was there any greater Indication at the Time the Signal was made for the Ships to chace to Windward of the French intending to fight, than there was on the preceding Day?

A. I did not think there was.

Q. Had the Admiral formed a Line on that Morning, must not he have bore down to have joined the Ships to Leeward, or have shortened Sail and called back the Red Division, and thereby have increased the Distance from the French Fleet.

A. He certainly must have bore down, and many of the Ships to Windward also, and would of course have increased his Distance.

Q. Can you inform the Court of the exact Time the French Fleet tacked from their Larboard to get on their Starboard Tack?

A. I cannot from my Memory inform the Court the exact Time, but believe it was about three Quarters of an Hour before we tacked.

Q. After the English Fleet were about on their Starboard Tack, was there any Sort of Change in the Wind?

A. It favoured us.

Q. When the Wind favoured the English Fleet a little, did you lay up with a Part of the French Fleet?

A. I did.

Q. Upon what Tack was the French Fleet when the Engagement began?

A. On the Larboard Tack.

Q. Do you know how they got upon that Tack, and when?

A. It was very thick, and I did not know.

Q. Had you lost Sight of them for any Time?

A. I think we had.

Q. When you discovered them again, after you had lost Sight of them, were they then got upon the Larboard Tack?

A. Yes, they were.

Q. Do you recollect how long it was upon your discovering them again upon the Larboard Tack, before the Firing began?

A. As well as I can recollect, it was upon my Officers acquainting me there were Guns firing ahead. I was in my Cabin, and did not myself discover them upon that Tack, until my Officer told me the Firing was begun.

Q. What Hour was that?

A. About

A. About Eleven o'Clock, I fancy.

Prisoner asked,

Q. Were the greatest Part of the Ships of the *British* Fleet, when they came to Battle, in a Situation speedily to support each other?

A. I could be no Judge of the Vice-Admiral of the Red's Division; I know that in the Part where I was, I was supported by the Admiral and his Seconds. I was accidentally ahead of the Admiral, or rather the Admiral came up to my Weather-quarter in the Course of the Action.

Q. Can Fleets at any Time, being on different Tacks, fight Ship to Ship with or without being in a regular Line?

A. I think not.

Q. You have described yourself to be near the Admiral, and supported by him, when you, in the *Ramillies*, and the *English* Admiral were engaged with the *French* Admirals, was that Part of the *French* Fleet in a regular Line as you and the *Victory* passed them, ranging along, or in a confused Position?

A. They were not in a regular Line.

Q. Were any of them right to Leeward of the others?

A. There were some of them a great deal to Leeward; but whether directly to Leeward I cannot say.

Q. Were there, to your Observation, more *British* or more *French* Ships engaged; what I mean by engaging, is like Men, not at a Distance?

A. My Attention was so much taken up to my own Ship, I really could observe only those that were just about me.

Q. At what Hour in the Afternoon, the 27th July, did you first see the *Victory* upon the Starboard Tack standing to the Southward, as you have said you did not see her wear?

A. As I am desired to be accurate in Time, I must say I have very little Idea how Time passed that Afternoon.

Q. Did you see her wear from the Larboard to the Starboard Tack?

A. No, I did not.

Prisoner said,

Time is the most material Thing for me to ascertain throughout the Course of my Duty to my King and Country on that Day; and, therefore, bringing Matters before the Court without bringing Time to them, is not giving the Information that I would wish to call for.—Captain Digby's not being able to be sure of his Time, almost makes one or two Questions from me to him to be unnecessary: But as he has mentioned, in a former Part of his Evidence, that he observed, when he did observe the *Victory* on the Starboard Tack, a Cluster of Ships about her, who or what they were he does not describe, any more than that he saw the Vice-Admiral of the Blue—I hope I am correct, for I have not read the notes very much—he did not say the *Victory* was in the Midst of the Cluster, but that he saw some Ships about the *Victory* that looked like a Cluster, and that the *Victory* was nearer to him; but I do not know whether he said that or no—I am not sure—but at that Time, can he say what the Hour was?

A. It was not long after the Vice-Admiral of the Blue had done engaging.

Q. Did you see when the Vice-Admiral of the Blue had done engaging?

A. I was told when.

Q. At what Hour was you told so?

A. I really cannot tell in point of Time.

Q. When you was to Leeward of the *Victory* on the Starboard Tack, in any Part of the After-

noon from Three to Six, were there any other Ships of the *British* Fleet to Leeward near you?

A. Yes, there were.

Q. Can you say how many?

A. There were at one Time four, if not five.

Q. Do you recollect the Names of those Ships?

A. I think one was the *Robust*, I think the *Sandwich* another; I do not recollect with Certainty the others.

Q. Whether at any Time from Three to Six you ever noticed the *Victory* appearing to lead down from the Wind towards you and those Ships?

A. I have said before, that I was so very much employed, I looked but very seldom; but I think she did lead down.

Q. Do you recollect what Part of the Time between Three and Six the Ships you have described to be near you, one, two, or all of them, left you, and which of them?

A. They left me one after another.

Q. Can you say at what Hour in the Evening of the 27th you saw the *Victory* without the Signal for the Line of Battle flying?

A. It was just as I was wearing, after I stood into the Fleet, that my Officer came and told me the Signals were down: Whether I saw or looked myself, I cannot tell.

Court asks,

Q. At what Time was that?

A. I believe I have declared it in a former Part of my Evidence, between Seven and Eight o'Clock.

Prisoner asks,

Q. Was it near dark?

A. It is impossible, at this Distance of Time, to recollect; I wish I could; I can so far recollect, that I am sure it was not a great While before it was Dusk: Whether it was Half an Hour, or an Hour, I cannot say.

Q. How soon after you wore at this Time was you astern of the Vice-Admiral of the Blue in that Part you described your Station to be?

A. Very soon after.

Q. Did you preserve that Station, and keep Sight of the Vice-Admiral of the Blue's Lights, all Night?

A. Nearly.

Q. Was you near the *Formidable* at Day-light?

A. I was.

Q. At what Distance, and how did the *Victory* bear from the *Ramillies* at Day-light?

A. She was upon the Lee-bow: Distances strike one so differently at different Times, it is difficult to ascertain: As near as I can guess, she was between one and two Miles.

Q. How was the Wind in the Morning of the 28th?

A. W. N. W.

Q. Did it blow fresh in Squalls?

A. It was more moderate than the Day before; but I think it did blow fresh in Squalls.

Q. Was there a large Swell?

A. There was a good deal of Swell.

Q. Was this Wind favourable to carry Ships to the Port of *Brest*?

A. It was.

Q. Was your Ship in a Condition to chace as a Man of War should chace, and entangle herself on a Lee Shore on an Enemy's Coast?

A. She was not.

Q. After I had brought the Fleet to, with their Heads to the Northward, on the Morning of the 28th, do you recollect I made any Signal?

A. I do not recollect the Signals nor the Time; but I recollect there were Ships made Signals that

they wanted to set up Rigging, but I cannot say when

Q. Were you one of those Ships?

A. I did make that Signal, after seeing many others had done it.

Court asks,

Q. Why do you think the *French* Fleet wished to avoid coming to an Action with the *English* Fleet after the first or second Day?

A. Because they might have come to Action if they had chose it.

Q. Have you not said there were several of the *English* Fleet to Leeward of the Admiral? Had the Admiral formed the Line in the Morning of the 27th, would it have been in the Power of any Part of the *English* Fleet to have brought on an Engagement any Part of that Day?

A. I do not think we could.

Prosecutor asks,

Q. If the Signal had been made for the Line of Battle, in forming of it would it have been necessary for the Admiral to have bore down farther into the Wake of the Vice-Admiral of the Red's Division? and would not the Vice of the Red's Division, in that Case, have come into Action in like Manner as they did, excluding only the *Duke*, which was a long Way to Leeward?

A. A Line of Battle, in my Opinion, always retards; and I imagine, had the Signal been made, the Red Division must have shortened Sail.

Q. If the *French* had not intended to bring on the Action, would they have tacked a second Time, and have edged down and attacked our Fleet, in the Situation our Fleet were in?

A. I understand from your Question, as if I had said they did not intend to bring us to Action; I only meant to say, that early on that Morning it did not appear to me they had any particular Design of coming into Action. I did not say at that Time I meant in the Morning; it was at Day-light, if you recollect.

Q. If the *French* Fleet had not intended to come to Action on that Day, could they not have avoided it?

A. They probably might have avoided it for some Time; but, as I was in the Rear of the Fleet, I cannot possibly say how long.

Q. If your Ship was not one of the Vice-Admiral of the Blue's Division?

A. She was.

Q. You have described your Situation in the Action to be mixed with the Center Division; do you know of any other Ship of the Vice of the Blue's Division being in the same Situation, in consequence of the Signal for those other Ships to chase?

A. I do not know of any others being in the same Situation, because I do not know any that were ahead of the Admiral.

Q. If those Ships of the Vice-Admiral of the Blue's Division who chased by Signal, or Part of them, together with your Ship, did engage with the Center Division, whether the Vice-Admiral of the Blue, and the rest of the Ships he was left with, were in a Situation to support each other, equal to the rest of the Fleet?

A. I did not chase; and as I was ahead of the Admiral, and the chasing Ships, I believe, engaged astern of him, I do not know their Situation, but that they were a good Way to the Windward just before I engaged.

Q. You have not said what must have been the Situation of the rest of the Division, whether they were upon an equal Footing to support each other with the rest of the Fleet?

A. I have not said where the chasing Ships engaged; but if they all were separated from their Division, they certainly could not support it.

Q. You have described that Part of the *French* Fleet were not in a regular Line of Battle, did you observe one Ship in particular being to Leeward of their Line, and shut out from it by other Ships closing to Windward, of which one of our Ships, supposed to be the *Courageux*, passed between her and the *French* Line? Do you remember any other Ship of the *French* Line so far out of their Line?

A. There was one Ship that was to Leeward of the rest, but cannot judge of the Distances of the others.

Q. Do you think, upon the Whole, that the Irregularity you observed in their Line, was greater than might naturally have been expected from their having been engaged with the Ships that passed before you?

A. There was an Irregularity in their Line, but what it proceeded from I do not know.

Q. Whether or no the Admiral with his own Division, and the Division of the Vice-Admiral of the Red, and such Ships of the Vice-Admiral of the Blue's Division, as had joined, did tack and double upon the Enemy, and continue the Engagement?

A. The Vice-Admiral of the Red and his Division passed to Windward of me, just at the Time I came out of Action, but I believe the Action was not renewed upon that Tack.

Q. Did the Admiral, with the whole of his Ships, keep so near the Enemy as to be ready immediately to renew the Engagement, when the Vice-Admiral of the Blue came out of it, or to support him whilst he continued engaged with the few Ships that were with him?

A. I have already described my Situation to be such about that Time, the *English* Fleet being between me and the *French* Fleet, that it is impossible for me to know how they were situated.

Q. Do you know that he did do so?

A. I have declared in other Words, I do not know it.

Court asked,

Q. Was it a favourable Change of Wind for the *English* on the 27th, or the Inclination of the Enemy to come to Action, that brought on the Action?

A. I believe the favourable Change of Wind helped; as I was in the Rear, as I have said before, I cannot determine the Situation of the Van of the Enemy.

The Prosecutor continuing to put fresh Questions, the Court retired to consider, whether to admit of it, he having declared, he had gone through his Examination of the Witness before the Prisoner had began to cross examine him.

Before the Court withdrew, the Prosecutor explained, that his Questions are such, as had arisen from those put by Admiral Keppel, relative to the Situation of the Witness after the Engagement was over, in consequence of his Cross Examination.

After some Time the Court returned, and the Judge Advocate read the following Resolution: "Neither Prosecutor or Prisoner, shall, in the further Proceedings on this Trial, cross-examine his own Witness, after either has put such Witness into Possession of the other, keeping, however, in Reserve, that either Party, after all the Witnesses have been gone through on both

H

Sides,

Sides, may then be at Liberty to call in those he may think fit, to clear up any Point wanting to be explained."

Captain Digby withdrew.

Honourable Captain Thomas Windsor, of his Majesty's late Ship the Fox, sworn.

Prosecutor asked,

Q. Whether you received any Orders from the Admiral in the Evening of the 27th of July?

A. Yes, I did.

Q. At what Time?

A. A little before Five o'Clock.

Q. Inform the Court what those Orders were?

A. The Orders I received from Admiral Keppel were, to stand towards the *Formidable*, with Admiral Keppel's Compliments to Sir Hugh Palliser, and to acquaint him, that he only waited for Sir Hugh Palliser and his Division bearing down into his Wake, for him to renew the Attack.

Q. Did you commit those Orders when you received them into writing?

A. No.

Q. From whom did you receive those Orders?

A. From Admiral Keppel.

Q. Did you go on Board to receive them, or was it by hailing?

A. I did not go on Board, the Message I received was under the *Victory's* Stern.

Q. Was it from the Admiral himself?

A. Yes.

Q. Have you had any Conversation with any Person since, to assist you in remembering and recollecting the precise Words of the Order you received, as you did not commit it to Writing?

A. No.

Q. At what Time did you deliver your Message?

A. I suppose, nearly about Half an Hour past Five o'Clock.

Q. Who received the Message from you?

A. I repeated the Message Twice to you.

Q. In delivering the Message, did you actually make use of those Words, That the Admiral waited for me and the Ships of my Division in order to go and attack, or only inform me, that the Admiral wanted the Ships of my Division in his Wake?

A. I have already repeated to the Court the Message Word for Word, as I delivered it to you.

Q. What Answer did I make you?

A. That you understood me very well.

Q. Did not I say, I desired you to acquaint the Admiral, I had repeated his Signals for the Ships to bear down?

A. I did not hear any Message delivered from you.

Q. Were not a Number of Ships Pendants then flying on Board the *Formidable*?

A. To the best of my Recollection, the *Formidable* threw out several Pendants after I delivered the Message.

Q. What Sail had the *Victory* set when you received the Message?

A. I do not recollect.

Q. Can you recollect what Signals she had flying?

A. I cannot charge my Memory.

Q. Do you remember your Ship's Company giving three Cheers to the *Formidable*?

A. Yes, I do, in Answer to three your Ship's Company gave the *Fox*.

Q. Are you sure the *Formidable* or *Fox* cheered first?

A. I am sure the *Formidable*.

Q. What Distance was you from the *Formidable* when you spoke to her?

A. So very close as to have our Sails becalmed.

Prosecutor has no further Questions to ask.

The Prisoner discharges him till his Defence.

Court asked,

Q. Were there any Signals thrown out from the Admiral for the Vice-Admiral of the Blue and his Division to bear down into the Admiral's Wake, before you was sent with that Message, and at what Time?

A. The Distance of Time is such that I cannot recollect.

Q. Did you see Admiral Keppel with the *British* Fleet run away from the *French* Fleet on the Day of the Action, or the Day after.

A. No.

Captain Windsor withdrew.

[Vice-Admiral Buckle, one of the Members of the Court, having, in his Place, acquainted the Court that he is by Sickness unable any longer to continue his Attendance: The Act of the 22d of George the Second, relating to the Government of his Majesty's Ships, Vessels, and Forces by Sea was read, by which it is enacted, That no Member, except in case of Sickness, shall absent himself; and it being thereby further directed, that the Proceedings of the Court shall not be delayed by the Absence of any of its Members; the Question was thereupon put, and it was agreed (the Court being sensible of the Vice-Admiral's Disability), that he may absent himself from further Attendance, as the Court will then be composed of more Members, than by the Act aforementioned are required for its lowest Number to be composed of.]

The Court adjourned, being Half past Three o'clock, till To-morrow at Ten o'Clock.

S E V E N T H D A Y .

THURSDAY, the 14th Day of JANUARY, 1779.

THE Court met according to Adjournment. The Members, on Account of the Absence of Vice-Admiral Buckle, from Sicknefs, took fresh Places; and they now fit as follows:

P R E S I D E N T,

Sir Thomas Pye, Admiral of the White.

John Montague, Esq; Vice-Admiral of the Red.

Mariot Arbutnot, Esq; } Rear-Admirals of the White.

Robert Roddam, Esq;

Captain *Mark Milbanke*.

Captain *Francis Samuel Drake*.

Taylor Penny.

John Moutray.

William Bennet.

Adam Duncan.

Philip Boteler.

James Cranston.

The Prisoner was brought in, and Audience admitted.

Captain Alexander Hood, of his Majesty's Ship the Robust, sworn.

Prisoner.

I know it is expected by some, that after the History which the Court has received of the Alterations made in Captain Hood's Log-book, by his Order, since my Trial was expected, I should object to his Evidence; but, desirous as I am, that every one should give Testimony who knows any Thing of the Operations of the Fleet under my Command, I rather wish to hear Captain Hood's Evidence.

Prosecutor.

I beg Captain Hood may inform the Court what those Alterations were before he proceeds upon his Evidence.

Captain Hood then addressed the Court in the following Words:

" *Mr. President,*

" Before I proceed to give Evidence, I must beg the Indulgence of the Court, for leave to explain the Nature, Sum, and Substance of the Alterations in the Log-book of the *Robust*, because I flatter myself, that not only this respectable Court, but the Public at large, will be well satisfied with the Innocence of them, and I trust, they cannot be construed in any Shape to affect one Side or the other. For my own Part, I never considered a Ship's Log-book to be material Evidence, much less did I ever expect that any Words that should be put into any Log-book should be considered as a Charge; God forbid that such a Thing should be conceived or adopted. The Winds, the Courses, the Distances of the *Robust's* Log-book, stand unaltered. The Corrections in it respect the Narrative Part only; and when I found my Ship's Log-book likely to be produced in a Court, perhaps on myself on that Account, not knowing but that I should appear here a Prisoner instead of an Evidence, I judged it proper to revise and correct it for the Credit of the Ship, and for the Sake of all her Officers. This was not done, Sir, in private but known to every Officer in the Ship. It was done to set forth a fair and faithful Representation of the Transaction on the 27th July. Sir, I stand here an attacked Man; from the 11th

August last, to the present Hour, my Honour has been wounded. In Papers of that Date, I was put under Arrest for Disobedience of Orders. In other Papers, I was broke; since which, Letters have been circulated to the greatest Characters in this Kingdom, charging the Rear Division with the Loss of that Day. The Words are from the Information I have received from one of the First Men in the Kingdom, that had the Rear Division done their Duty Half as well as the Van and Center, a complete Victory would have been obtained; since which, there have been many anonymous Publications which I very much despise. But, Sir, I was alarmed greatly when in a public Assembly the whole of that Division seemed to be aimed at. It became incumbent on me, I thought, to revise my Log-book, that it might be a Record for the Benefit of my Officers whenever I came to be put upon my Trial. If I have erred, I have erred innocently.

The Master of the *Robust* has refused here to take the Oath that was administered to him. I applaud him for it. It was acting like an honest Man, having a conscientious Regard to Truth. Whenever he gives his Evidence here, if he is admitted to give it, I am persuaded it will have full Weight: he offered, as I am informed, but I only take that from Information, that he offered, at the same Time, to swear to the Truth of the Log-book. The Court will give me Leave to make one Observation upon the Credibility of Log-books; and which, in the Opinion of the Law, the Man who swears that the Log-books have not been altered from such a Period to such a Period, or the Man that acknowledges an Alteration, and swears to the Truth of the Log-book; I am no Lawyer, but common Sense tells me, that the one is full as strong an Evidence (if it is to be admitted) as the other; but I do not think, God knows, that Log-books, which are kept in the Manner that Ships Log-books are, ought to be implicitly taken as Evidence.

" They serve to assist the Memory, and I shall beg leave to call the Master of the *Robust* to answer such Questions as the Court shall think proper to put to him, if they shall judge it necessary, in order to elucidate this Business; and, I trust, that when the whole is investigated, that I shall not be thought to have done any Thing to the

Prejudice

Prejudice of that Honourable Admiral, or have acted in the smallest Degree a dishonourable Part. I beg also that Lieutenants *Pitt* and *Lumley*, if the Court approve of it, may be called to produce their Logs, or Journals, taken from the original stating of the Matter. The Court then will be in full Possession of the Alterations, and to their Judgments, and to the Judgment of the Public without Doors, I submit my Honour. Sir, I must beg leave to say one Thing more; it strikes me very forcibly, as an Officer in the King's Service, if a Captain of one of the King's Ships has not a Power of correcting and revising his Log-book, I really think he is in a most deplorable Situation.

"I think, as far as I understand the Instructions, that I am authorized to do it—that I am called upon to do it—the Master is also called upon to do it by his Instructions. The Court must know that he is to correct his Day Work, and to correct his Log-Book. Why? It is done perpetually—there is no Law against it—there can be no Criminality in the Thing, unless the Words convey Criminality. Now, Sir, I declare, that if I have not that Power of revising and correcting my Log-Book whenever it shall be found erroneous, my Honour, my Reputation, and my Existence in the Service depend upon it, and if that is taken away, I declare here that I will never again set my Foot on Board of a King's Ship."

Prosecutor asked,

Q. Inform the Court what those Alterations were in the Log-Book?

A. The first Alterations relate to sending out Ships to chace in the Morning.—My original Log-Book made the Vice-Admiral to send out Ships to chace, instead of the Admiral; that was corrected by saying, The Admiral made the Signal for us and several other Ships to chace to Windward. The second Part speaks more fully of the Admiral's Signals made in the Afternoon for the Ships to bear down. The other Alteration is the seeing the Three Ships in the Morning of the 28th, which was omitted in the original Log-Book—how omitted, God knows, I cannot conceive, for I believe every Man in the Ship saw them—I know I did. The Log-Book which is before the Court speaks of the *Robust's* bearing down in the Evening to take her Station, and it goes on to say, that she continued in her Station with as much Exactness as a disabled Ship could do, the Admiral making much Sail.

Court asked,

Q. Is that which you mentioned last, Part of the Alteration?

A. That is the Alteration.—The Master was present at the Time it was made.—I hope the Court, if there should be any Variation, for I have not looked at the Log-Book, will indulge me in it, for I mean to tell the Truth—I have not, I declare upon my Oath and upon my Honour, any Design—I shall impart to this Court every Thing that I can respecting the whole of that Business.

Lieutenants Pitt and Lumley were called into Court, and produced their Journals; but it being observed that both are among the Witnesses to be examined, it was agreed, that any further Enquiry into the Alterations will come best when those Officers are before the Court for a full Examination.

They withdrew, and the Court then proceeded to examine the Witnesses.

Court asked,

Q. What Hour in the Afternoon was it the

Signal was made to bear down into the Admiral's Wake, as you was a much disabled Ship, and the Admiral making much Sail?

A. Not in the Afternoon, it was in the Night.

A Question was then offered by the Prisoner, and put.

Prisoner asked,

Q. Where is the Entry of the *Robust's* Log-Book respecting the 27th and 28th of July, as it stood originally?

A. Upon my Word I do not know.

The Prisoner was told his Questions cannot be admitted till the Prosecutor has done with the Witnesses.

Prosecutor then proceeded,

Q. In what Situation was the French Fleet in the Night of the 23d at Dark with respect to the British Fleet, and on what Tack were they standing?

A. The French Fleet were to Leeward of the British Fleet on the Night of the 23d, standing on the Starboard Tack.

Q. How was the British Fleet then lying?

A. The British Fleet was then lying to, on the Larboard Tack.

Q. I mean in the Evening?

A. I do not know the exact Time.

Q. I mean at dark Night?

A. At dark Night the British Fleet was laying to on the Larboard Tack.

Q. How was the Wind then?

A. About W. N. W.

Q. Then the French being on the Starboard Tack, and to Leeward of the British Fleet, and the Wind W. N. W. had they not the Port of Brest under their Lee?

A. They certainly had.

Q. Did the British Fleet continue to lie to all that Night?

A. I think they did.

Q. If the French Admiral had intended to have avoided coming to an Engagement would he not have continued to stand upon that Tack all that Night towards Brest?

A. If the French Admiral's Orders authorized him to go into Port, he certainly had it in his Power.

Q. Was or was not the French Fleet the next Day to Windward of the British Fleet, and had they not thereby placed the British Fleet between it and the Port of Brest?

A. The French Fleet was certainly to Windward of the British Fleet in the Morning, and consequently must have placed them between it and the Port of Brest.

Q. From these Motions of the French Admiral, did you apprehend he meant to avoid an Engagement, or to bring one on when the Wind and Weather should make it proper for him so to do?

A. These Motions of the French Fleet indicated to my Mind an Intention to keep the Sea, of course they did not mean to avoid an Action; and from the subsequent Matter I judge the French Admiral meant to engage the British Fleet?

Q. Endeavour to recollect the Wind, Weather, and Sea, during the 24th, 25th, and 26th July, if, during those Days, you think it would not have been disadvantageous to the French Fleet to have attacked the British Fleet, considering the Wind, Weather, and Sea, during those Days, as in that Case they must have fought their Lee Guns?

A. The Wind and Weather during those Days was squally, sometimes with Rain, as far as I recollect, the Sea rather rough. It would have been disadvantageous

disadvantageous for any Fleets to have engaged during those Days, more particularly the *French* Fleet, because they must have fought their Lee Guns, being to Windward, which I think they could not have done with any Advantage.

Q. In the Morning of the 27th, was not the *British* Fleet scattered, by which I mean several Ships of each Division being in various Bearings and Distances from their respective Admirals?

A. I was not on the Deck till after the Signals were made from the Admiral for the *Robust*, and I think Five other Ships of the Vice-Admiral of the Blue's Division, to chase to Windward, consequently I can't speak to the State of the Fleet before that Period.

Q. Did not that Signal cause that Part of the Fleet to be more dispersed and separated than they were before?

A. I think those Six Ships, the *Robust* and Five others, chasing to Windward, as far as I can recollect, from between Five or Six in the Morning till Ten, I believe, carrying during that Space of Time as much Sail as it was their Duty to do, the Signal having been thrown out for them to chase, it must of course have increased their Distance from the Center of the Fleet, and they thereby may be said to be more scattered or dispersed?

Q. Did not that Signal leave the Vice-Admiral of the Blue with Four Ships only?

A. The Vice-Admiral of the Blue's Division consisted of Ten Sail. I have given the Court an Account of Six of them having been ordered to chase to Windward by Signal, consequently there could remain but four Sail with the Vice-Admiral.

Q. At what Time did the *British* Fleet tack all together by Signal?

A. I wish, in the Course of the Evidence that I shall give this Day, not to be confined precisely to Time, it being much out of my Power so to do. As near as I can recollect, the Admiral made the Signal for the Fleet to tack together about Ten o'Clock.

Q. Was there any Signal made that Day for a Line of Battle before the Engagement began?

A. None that I saw.

Q. At what Time did you first see the *French* Fleet to be in a Line of Battle that Morning?

A. To the best of my Recollection they began to form and were forming very early in the Morning. I believe they were completely formed between Ten and Eleven o'Clock.

Q. Did not the *Victory* begin to engage the *French* Admiral in the Center of their Line?

A. The *Robust* chasing from the Fleet that Morning threw her at too great a Distance for me to judge precisely of that Event.

Q. Had you an Opportunity of seeing the *Formidable* come into Action?

A. I saw the *Formidable* go into Action, but cannot say the precise Time.

Q. Did you observe several Ships in the Van of the *French* Line fire at her, which she did not make any Return to before she began a close Engagement herself?

A. I know that the *French* ships fired a great many Shot at the *Robust*, which she made no Return to, till I was near enough to do Execution. I judge of the Vice-Admiral's Conduct by my own.

Court asked,

Q. Did you see them fire on the *Formidable*?

A. No; I did not.

Prisoner asked,

Q. Did you see the *Formidable* close engaged with some of the Ships ahead of the *French* Admiral in the *French* Line at the Beginning of the Engagement?

A. I cannot speak positively with what Ships the Vice-Admiral of the Blue began to engage.

Q. Was not the *Formidable* as long, and as close engaged, as the *Victory* was?

A. I cannot say how long the *Victory* was engaged, but I saw the Vice-Admiral of the Blue engaged from the Time he began his close Action till he passed the Rear of the Enemy's Fleet.

Q. Was not the *Victory* while she was in Action supported by the whole of the Admiral's Division, and Part of the Ships of the Vice of the Blue's Division which had joined him?

A. I take it for granted, that the whole of the Admiral's Division gave all the Support they could do to their Flag. It is impossible to see in Time of close Action what other Ships are engaged.

Q. Was the *Formidable* supported by the whole of her own Division, Part of the Ships having been taken from her by Signal to chase?

A. No.

Q. How many Ships remained after of the *Formidable* whilst she engaged?

A. I believe Six; the Six which chased to Windward. I can't speak particularly to more.

Q. Was your Ship one of them?

A. Yes.

Q. Can you name any of the others?

A. The *Terrible*, the *Elizabeth*, *Egmont*, I think — the *Worcester*, *America*, and the *Robust*.

Q. Are you certain with respect to the *Egmont* and *America*?

A. I can't be certain.

Q. Did the Admiral with the Van and Center Divisions, with such of the Ships of the Vice of the Blue's Division as had joined him, after passing the Rear of the Enemy's Line, immediately wear and double upon the Enemy, and continue the Engagement?

A. I don't know whether the Van or Center, with such Ships as had joined, wore or tacked; I did not see them; at that Time, I was not out of the Fire of the Enemy.

Q. Do you know whether the Admiral kept so near to the Enemy, after he had passed them, as to be ready to have immediately renewed the Engagement, when the Vice of the Blue came out of it, or to countenance and support him whilst he remained engaged with the few Ships that were with him?

A. I do not know.

Q. At the Time when you came out of the Engagement, how far was the Admiral distant from the *French* Rear?

A. When the *Robust* came out of the Rear of the Enemy, I judged that the Admiral might be about Two Miles from the Rear of the Enemy.

Q. Did you observe at that Time which Way his Head was?

A. He was standing towards the Enemy.

Q. Before that, had he not been at a greater Distance?

A. As I do not know how long the *Victory* stood after she had passed the Enemy, nor can I pretend to say when she did wear, it is impossible for me to speak of that Distance.

Q. When was the Signal for Battle hauled down?

A. Ac-

A. According to Time in my Ship, about Two o'Clock.

Q. Did you observe the Admiral unbend his Maintop-sail whilst standing towards the Enemy?

A. I did not see the Admiral unbend his Maintop-sail.

The Prisoner admits he did unbend his Maintop-sail at the Time mentioned in the Prosecutor's Question.

Q. Did you observe the *Formidable*, as soon as she passed the Rear of the *French* Line, wear and lay her Head towards the Enemy again?

A. Yes, I did.

Q. Was not the *Victory* and the Body of the Fleet standing towards her and the *French* Fleet?

A. They were.

Q. Did you afterwards observe some of the *French* Fleet wear, and stand directly towards the *Formidable*?

A. I did not see the *French* Ships wear at the Time the Vice-Admiral alludes to.

Q. Did you see any of them stand towards her?

A. Yes.

Q. Did you observe her to wear again, and lay her Head towards the *Victory*?

A. I did not.

Q. Did you see her when she and the *Victory* met?

A. I did not.

Court asked,

Q. Do you know they did meet each other?

A. I do not.

Q. When you saw the Admiral the Time you mention his being about Two Miles distant from the Enemy, standing towards the *French* Fleet, did the Body of the Fleet appear to be with him?

A. There appeared to be a great Number of Ships with him, but I did not count them.

Q. Was that the Time you described the *Formidable* to be laying with her Head towards the Enemy again—and how much nearer was she to the Enemy than to the *Victory*?

A. The *Formidable* at that Time appeared to be pretty near astern of the Rear of the Enemy, and within a small Distance, as it appeared to me.

Q. Was not, at that Time, the Vice of the Red and his Division laying to Windward of the Enemy's Rear?

A. At that Time the *Victory* and the Vice of the Red were to Windward of the Rear of the Enemy.

Q. Did you see the Admiral wear again, and stand from them?

A. I saw the Signal on board the *Victory* for the Fleet to wear, and they did wear.

Court asked,

Q. At what Time?

A. Between Two and Three o'Clock, according to Time in the *Robust*.

Prosecutor asked,

Q. When the Admiral had wore, was the Course he then stood from the Enemy?

A. Yes.

Q. Did you observe the *French* Fleet to break up their Line of Battle, and become in Confusion?

A. The *French* Fleet did break up their Line of Battle, but the present Time I cannot say.

Q. Was it at or about the Time the Admiral wore and stood from them, or was it before or after?

A. To the best of my Recollection, it was after.

Court asked,

Q. When the Admiral wore and stood from

the Enemy, did he go close hauled, or from the Wind?

A. I believe the Fleet were close hauled.

Q. Were the Whole of the Red and the Admiral's Division on the Larboard Tack, when the Signal was made to wear?

A. I cannot speak positively to the Whole; but the Admiral's, as far as my Memory will serve, were on the Larboard Tack.

Prosecutor asked,

Q. From the Description you have given of the Admiral and Vice-Admiral of the Red being to Windward of the Enemy, with a great Number of the Fleet about him, if, instead of the Admiral's being about Two Miles distant from the Enemy, they had been as near to the Enemy as the *Formidable* was when she wore upon coming out of Action, would it not then have been a favourable Opportunity for re-attacking the *French* when they broke up their Line?

A. If that Number of Ships I have described had been as near to the Enemy as the *Formidable*, and the Admiral had thought that the Ships were in Condition to re-attack the Enemy, it appeared to me a favourable Opportunity for doing it.

Q. Even if they had advanced from the Situation they were in, do not you think that the *French* Fleet might have been attacked, and prevented from forming a new Line of Battle?

A. The Situation of those Ships being to Windward of the Enemy, gave them an Opportunity of attacking the Enemy, provided the Ships were in a Condition, of which I can't be a Judge in my distant Situation—I can only be a Judge from Positions.

Q. From the very brisk Fire kept up, and the very distinguished good Behaviour of all our Ships which did get into Action, have you any Reason to suppose the *French* Fleet did not suffer in Proportion to the *English*?

A. I must conclude they did suffer, from the brisk Fire of all the Ships that got into Action. I judge they did suffer in Proportion to the *English*.

Court asked,

Q. Did you observe the *French* Fleet as much disabled in their Masts, Yards, and Sails, as the *English* Fleet?

A. I don't recollect that any of the *English* or *French* Fleets suffered from any of their lower Masts being carried away by Action; I can't say how far they might be disabled.

Q. Do you not think a Ship may be so far disabled, without carrying away her lower Masts, as not to be able to pursue an Enemy for some Time?

A. Certainly.

Q. You have said in the Course of your Evidence, that the *Robust* was disabled after she came out of Action—Relate to the Court the State she was in after the Engagement, and how many Hours and what Time it was before she was in a Condition to pursue the Enemy, provided the Commander in Chief had thought it proper so to do?

A. I desire to know whether every Particular is meant.

Court. Only Masts, Yards, and Sails—such as will prevent Ships sailing.

Witness then proceeds,

When I came out of the Action, she had one large Shot through her Mainmast, Two through the Foremast (one through the Center, the other oblique); she received also Two Shot in her Bow-sprit, One immaterial one in her Mizzenmast; her Maintop-sail-yard was shot away, and Part of it came down on the Quarter-deck; her Foretopgallantmast

tantmast was shot in two; she received Two Shot in the Mizzenyard; she received under Water, and a little above the Water, about Eleven Shot, and Three or Four under Water (one very dangerous); Thirteen in her upper Works; the Maintopmast was shot in Two or Three Places, but they were not such as to prevent the Ship carrying Sail on it. It is impossible for me to say the State and Condition of her Sails, they were so much shot. Most of her Braces, Bowlings, and running Rigging were shot away; many of her Lower and Topmast-shrouds were shot away; one of the Shot between Wind and Water was about a Forty-six Pound Shot *English*; it struck the Ship about Five or Six Feet under Water, and took place directly against a hollow Beam and Futtock Rider; in consequence of which, and other Shot, the Ship made a great deal of Water—a very unfortunate one it was for me. I had given Directions to wear my Ship immediately on the *Formidable's* wearing; when the Carpenter came to my First Lieutenant, and said it was impossible for the Ship to be wore. (I forgot to mention, that the Two Lower-deck Ports on the Starboard Side were shot away. My Answer to that was, It is an Evil I am obliged to submit to, and I must continue on the same Tack, my Purpose being to renew the Attack instantaneously, the first Ship I could get along-side of. My first Object was to repair the Damages my Ship had sustained; there was a great deal of Water in the Ship, and the People were extremely alarmed; I ordered the Carpenters over the Side to stop the Leak; I fancy it was Three or Four o'Clock before I could put my Ship's Head the other Way.

Court asked,

Q. What Time was it before you were able to renew the Action?

A. There was no Signal for Battle out.

Q. But supposing there had?

A. Before the Leak I have described was thoroughly stopped, it might be Seven o'Clock in the Evening, or after—it might be Eight o'Clock.

Q. Were your Sails and Rigging at that Time in Condition to renew the Attack?

A. I tacked the Ship at Four o'Clock. I certainly should have renewed the Attack, if I had been a single Ship, as soon as the Leaks were stopped.

Q. In the Condition your Leak was when you tacked, do you think your Ship was fit immediately to have renewed the Attack?

A. No, I don't think she was in a Line of Battle.

Prosecutor asked,

Q. Did you observe one of the *French* Ships of the Line bear away, with her Mainyard shot away, attended by a Frigate?

This Circumstance was admitted by the Prisoner.

Q. Would the Manner of renewing the Attack, as I have described in a former Question, have required a Pursuit; having stated the *French* Fleet to have broke up their Line, and beginning to form a new Line, with their Heads towards the *British* Fleet?

A. It depends very much upon the Operations of the Enemy's Fleet.

Q. Were the Enemy's Fleet suffered to form a new Line, without being molested, standing after the *English* Fleet?

A. I don't recollect the Time the Enemy began to form their new Line—In the Evening I observed the Enemy's Fleet drawn up to Leeward of us, but not in a well-formed Line; Part of the Rear appeared to me in some Confusion.

Court asked,

Q. If you had been One of those Ships to

Windward of the *French* Fleet, could you have obeyed the Signal for re-attacking, had it been made at the Time the *French* Fleet were in Confusion, in the Condition your Ship was.

A. No, not at that Time, it was impossible.

Prosecutor asked,

Q. Did, or did not, the Admiral stand away as directly from the Enemy as the Wind would permit, from the Time he passed the last Ship of the Enemy's Line, during the whole Afternoon and Night of the 27th, except during the Interval of the Two SUPPOSED Times of his wearing in the Afternoon?

A. After the *British* Fleet wore to the Southward, with the Starboard Tack on board, it continued on the same Tack the whole of the Afternoon, and during the Night.

Q. You have not said from the Enemy?

A. They were on the same Tack.

Q. Was not that as direct a Course from the Enemy as the Wind would permit?

A. I take it the Two Fleets were standing on parallel Lines; the *British* to Windward, and the *French* to Leeward.

Q. At the beginning of the Time you are speaking of, when the Admiral had wore and stood to the Southward, were not the *French* Ships then all astern of us?

A. They were.

Court asked,

Q. In the Situation you have described the *English* and *French* Fleets to be at the Time they were standing in parallel Lines to each other, the *British* Fleet to Windward, and the *French* to Leeward, do you think the Admiral of the *British* Fleet was then flying from his Enemy?

A. At that Time, to be sure, there was no Appearance of Flight.

Q. At any Time, during that Day, or while the *French* Fleet were in Sight of the *British*, did the Admiral shew any Sign of his flying from the Enemy?

A. There was no other Moment of the Day but what you described that can convey such an Idea.

Q. The Reason for asking that Question was because you said "at that Time," which does allude to another?

A. Then I beg to have that altered, the former Part of the Day was Pursuit.

Q. In the Answer you have given to the Vice Admiral's Question, you have said the Two Fleets were in parallel Lines; the *British* to Windward, the *French* to Leeward, do you think that the *French*, when to Leeward, lying in that Position, were chasing and endeavouring to come up with the *British* Admiral, who is supposed to be running away, to give him Battle, and had the *French* Fleet all the Sail they could set; because, in the Charge, it is said, he pursued it with the Fleet of *France*, and offered it Battle?

A. As near as I can recollect it, the Positions of the Two Fleets, about Eight o'Clock in the Evening, or somewhere about that Time, the *English* Fleet to Windward, and in that parallel Situation I have described, were endeavouring to form a Line of Battle, and had been the whole Afternoon, from Three o'Clock, the Signal was out to form a Line of Battle. The *French* Fleet being to Leeward, appeared to me to be forming the same Evolutions. At this particular Time, towards the close of the Evening, which was the last Observation I made, the Van of our Fleet seemed to be advanced before the Van of the Enemy's, and, as near as I can recollect, the *Victory* seemed nearly opposed to the Van. Fleets, in those

those Situations, one cannot conceive to be either chasing or flying.

Q. As the Enemy had been long in fight, and you expected to attack, or to be attacked, when the *Robust* and Five Sail more were ordered to chase to Windward, did your Judgment, as an Officer, lead you to think that the Signal was made for those Ships to close the Fleet, or to scatter them from the Fleet?

A. It threw those Ships further from the Center. I have given my Evidence upon that Question, that the Signal being thrown out to chase those Ships to Windward, and continuing so long, from Five or Six, I think till Ten o'Clock, must have increased their Distance from the Center.

Q. But I ask your Judgment as an Officer, was that to close with the Fleet, or extend from it?

A. It is impossible for me to answer what the Admiral's Intentions were in throwing out that Signal—I can only speak of the precise Situation of the Center and the *Robust*. I cannot divine into the Admiral's Reasons.

Q. I did not ask the Admiral's Reasons, I ask your Opinion?

A. It threw those Ships at a greater Distance from the Center.

Q. But if no Signal had been made from the Admiral, should you have continued in the same Situation you did?

A. I should not have chased at all.

Q. You were to chase to Windward by Signal?

A. We were all on the same Tack.

Q. But the Admiral tacked you know?

A. We tacked the same Moment.

Q. But was it to close the Center?

A. It certainly extended it.

Court asked,

Q. You never tacked till the Admiral did?

A. No.

Q. Then it must extend certainly?

A. Yes.

Q. When the Signal was made by the Admiral for your Ship and Five more to chase to Windward, did you then look upon it you was to make the best of your Way to the French Fleet?

A. The chasing to Windward increased the Distance from the Center of our Fleet, and neared it to the Enemy.

Q. If the Wind would have permitted you to have got up with the French Fleet, would you have thought it your duty to have brought the French Fleet to Action?

A. Certainly, not without the Signal for Battle.

Being near Four o'Clock, the Court adjourned till to-morrow Morning Ten o'Clock.

E I G H T H D A Y.

FRIDAY, the 15th Day of JANUARY, 1779.

COURT met according to Adjournment. Prisoner brought in and Audience admitted.

Captain Hood again called in.

Court asked,

Q. On the 28th in the Morning, when the French Fleet were seen to Leeward at a great Distance, not in a Line of Battle, but in a Heap, would it have been prudent in the Situation the British Fleet was then in for the Admiral to have pursued them?

A. I did not see the French Fleet to Leeward in the Morning of the 28th, excepting Three Sail.

Q. Did you see when the Admiral made the Signal in the Morning of the 28th, for the Three Ships to chase any Ships, make a Signal for setting up Rigging?

A. I saw the Flag for some Ships to chase to the S. E. early in the Morning. I don't recollect to have seen, at that Time, any Signal for Ships to set up Rigging.

Q. At what Time, or how long after, the Signal was out to chase?

A. I can't say what Time.

Q. Did you make that Signal.

A. I did, but not till after the Admiral had made a Signal for setting up Rigging, I fancy all the disabled Part of the Fleet made it.

Prosecutor asked,

Q. Do you know any good Reason why those Three Ships were not chased?

A. I can't pretend to give Reasons for the Admiral. He is to judge whether the Ships were or were not to chase.

Q. Was the Signal made for setting up Rigging before the Admiral made the Signal for laying his head to the Northward?

A. I can't speak with respect to other Ships, I can only say, I did not make the Signal for setting up Rigging till the Fleet lay with their Heads to the Northward.

Q. Whilst your Ship was engaged, was any other Ship near enough so as to be of Support to each other?

A. I did not see any Ship ahead, or any Ship astern of me, in passing the French Line, nearer than a Mile, to the best of my Judgment in estimating Distances.

Q. You have related the numerous Damages your Ship sustained in the Action, was it, or was it not occasioned by the Ships being scattered, dispersed, and separated from each other?

A. I have given my Answer to the two Distances of the *Robust* from the Ship ahead and the Ship astern, which is all I can say upon the Subject.

Q. From the Admiral's shortening Sail whilst standing towards the Enemy; hauling down the Signal for Battle; wearing and standing to the Southward; with the French Fleet then astern.—Did you, or did you not, then conclude, that the Admiral had determined not to re-attack that Evening?

A. I have already said, I did not see the Admiral shorten Sail, when the Signal for Battle was hauled down. I can't pretend to judge of the Admiral's Determination.

Q. Have you since been of that Opinion, from the various Motions of the Admiral at that Time, and from the Admiral's own Account published by Authority?

Prisoner objected to the Question, saying, his Letter must be commented upon by itself, and that Captain Hood will not be allowed to judge of it.

Court retired, and in a little Time returned having agreed the Question is not proper to be put.

Prosecutor

Prosecutor.

The Court having decided against putting that Question, I beg to have Liberty to call Captain Hood, after proving the Admiral's Letter, and then to put that Question.

Prisoner.

Whenever that Letter is shewn, I shall admit it, and after that shall object to that Question being asked of any Witness.

Prosecutor.

When that Letter is produced, I shall again beg to take the Sense of the Court, whether I may then put the Question.

Prisoner.

And I shall then object to it.

Prosecutor asked,

Q. If the Vice of the Red and his Division did not bear down into the Station of the Vice of the Blue in the Afternoon of the 27th?

A. I was too much engaged in the Business of my own Ship to observe that Operation.

Q. I would ask Captain Hood, as an old Officer, who has seen a great deal of Service, whether he ever knew, whilst the Signal for the Line of Battle ahead was flying, the Commander in Chief order the Van or Rear Division to take the Place of the other, without he was first satisfied that one of those Divisions was disabled from taking its proper Station?

A. During the Course of my Service, I don't remember to have seen that done.

Q. Were not the Vice of the Blue, with his Ship, and those then with him, the last that came out of the Engagement and disabled?

A. They were the last that came out of the Engagement, and were disabled. I cannot speak positively as to all of them.

Q. Is there not a Signal appointed, when the Commander in Chief wants the Commander in the Second or Third Post, with his Division, to make more Sail?

A. Before I give my Answer, I beg the Court's Leave to refer to the Fighting Instructions.

Referred, and then answered,

Yes, it is the 12th Article of the Fighting Instructions.

Q. Is there not also a Signal for all Flag Ships to come into the Admiral's Wake or Grain?

A. Yes; it is the 11th Article of the Fighting Instructions.

Q. Was your Ship to windward of the *Victory*, within Half an Hour after she wore and stood to the Southward?

A. She was at that Time to Leeward of the *Victory*?

Q. Did you observe any Signal made in the Night of the 27th by the *French* Fleet?

A. The early Part of the Night I observed some Signals made by Rockets, or Things of that Kind.

Q. Did you observe them to bear away in the Night?

A. I did not.

Q. Do you know if any Signal was made in the Morning of the 28th for seeing the *French* Fleet?

A. I do not know of any Signal being made, but have heard there were some.

Q. At what Distance were the Three Ships you mention from the *British* Fleet?

A. I can't pretend to ascertain the Distance with Exactness—they appeared to me, if my Eye does not deceive me, to be about Four or Five Miles from the *Robust*. Distance is a vague Thing.

Q. Whereabout was the *Robust* at that Time, with respect to the *Formidable* and the *Victory*?

A. She was to windward of both.

Q. Then were those Ships nearer to any other Part of the *British* Fleet than to the *Robust*?

A. They were.

Q. Did they appear to you to be Line of Battle Ships or Frigates?

A. They appeared to me to be Line of Battle Ships.

Q. Did the Admiral lay the Fleet early in the Morning of the 28th, with their Heads to the Northward?

A. The Admiral did lay the Fleet early in the Morning of the 28th with their Heads to the Northward, but I do not know the precise Time.

Q. Which Way did those Three *French* Line of Battle Ships stand when they made Sail?

A. They made Sail to the Eastward, going large, or rather before the Wind.

Q. What Latitude was the *Robust* in, on the 27th at Noon?

A. $48^{\circ} 16'$ is the Latitude delivered to me by the Master of the *Robust*.

Q. What were the Bearings and Distance of *Ushant* at that Time?

A. North 81 East 45 Leagues; but I must beg to observe to the Court, that the Ship was nearer to Land than she was by Reckoning?

Q. Do your Reasons for supposing she was near to Land arise from a Back Reckoning since that Time?

A. The Reasons arise from the sailing of the Ship from that Day till we made the Land.

Court asked,

Q. What Land?

A. Scilly.

Prosecutor asked,

Q. Had you any Reasons at the Time?

A. No—I must beg to observe to the Court, that on the 28th at Noon, the *Robust* was but Thirty-eight Leagues from *Ushant*.

Q. Supposing yourself at that Distance of Thirty-eight Leagues from *Ushant*, do you apprehend there would then have been any imminent Danger if our Fleet had pursued those Three *French* Ships.

A. There did not appear to me to be any imminent Danger.

Q. How were the Wind and Weather on the 28th?

A. The Wind was Westerly, and the Weather moderate, I think.

Q. In the Middle of Summer, with short Nights and moderate Weather, do you apprehend there was any imminent Danger, if the Fleet had chased till they had seen those Three *French* Ships and the rest of the Fleet into Port?

A. I don't think there was any imminent Danger, but the Admiral must be the Judge.

Prosecutor has at present no further Questions to ask Captain Hood.

Court asked,

Q. Was your Ship, on the Morning of the 28th, in a Condition to have chased, as a Man of War should do, when her Signal was made to chase?

A. The *Robust*, in the Morning of the 28th, was not in a perfect Condition to chase.

Q. Do you think, supposing the *British* Fleet to sail equally well with the *French* Fleet, there was a Probability of the Admiral's coming up with them before Night, provided they continued to fly from him?

A. I think not.

Q. If the *British* Admiral had chased the *French* Fleet, and seen them go into Port, supposing himself to be within Four Leagues of the *French* Coast,

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and

and a Gale of Wind had come on, would not the *British* Fleet have been in great Danger, in the Condition it was, making the Enemy's Coast a Lee Shore?

A. I certainly think the disabled Part of the *British* Fleet would have been in Danger.

Q. Had the *French* Fleet, after the Action of the 27th, when to Leeward, continued to lay to till Day-light the next Morning, do you not think that Admiral *Keppel* would have bore down and engaged them, provided the Ships were in a proper Condition so to do?

A. He certainly would, in my Opinion.

Q. On the Morning of the 27th, when the *Robust*'s Signal was made to chace to the Windward, what was her Situation with respect to the *Victory* and the *Formidable*?

A. I have already given in Evidence that I was not on the Deck till after the *Robust* had chaced by Signal, I therefore can't state the Situation of the *Robust* before that Signal was made, but from the Report of my Officers.

Q. Can you recollect whether she was much to Leeward of the *Victory*?

A. Not much to Leeward of the *Victory*, and she was to Windward of the *Formidable*.

Q. Have you Reason to suppose you was in your Station before you chaced?

A. I was, by the Report of my Officers, within Three Cables Lengths of the *Formidable*, and the *Formidable* was in her Station.

Q. By your having chaced to Windward, did you not get sooner into Action than you would have done had you not chaced?

A. I believe not.

Q. Had you been in a Line of Battle on the Starboard Tack, and of consequence in the *Victory*'s Wake, would you not have passed the Enemy at a much greater Distance than you did?

A. I cannot answer that Question.

Q. Was the Enemy's Shore a Lee one as the Wind was in the 28th in the Morning?

A. The Wind was W. N. W. on the Morning of the 28th.

Q. Was that or not a Lee Shore in your Opinion?

A. It blows directly into *Brest*, I think it does.

Prisoner asked,

Q. Where is your Entry of the *Robust*'s Log-Book of the 27th and 28th *July* as it stood originally?

A. I really don't know.

Q. Did you see any rough Minutes of these Two Days Transactions before they were entered in the Log-Book, and were they approved by you?

A. I certainly did see it in a rough Paper, and not knowing at that Time but it was correct, it was inserted in the Log-Book.

Q. Was it inserted by your Approbation?

A. I directed it to be wrote in the Log-Book.

Q. When was it that the Alterations and Additions were made?

A. I do not remember the Day, but the Master having been already before the Court, I submit the Day to his Recollection.

Q. As you cannot be precise as to the Day, you can say whether you had then heard of the Court-Martial intended to be held on Admiral *Keppel*?

A. When I took into Consideration the Alterations and Corrections in the *Robust*'s Log-Book I had not heard of any Intention of Admiral *Keppel*'s being tried.

Q. When you ordered the Alterations and

Corrections to be inserted, had you not then heard of Admiral *Keppel*'s Court-Martial?

A. I had not heard of Admiral *Keppel*'s Court-Martial, but it was rumoured here.

Q. What do you mean by a Rumour of a Court-Martial which you had never heard of?

A. What I mean by a Rumour is, that a great many People were talked of to be tried, as common Conversation.

Q. When the Alterations were actually made in your Presence, had you then heard of Admiral *Keppel*'s intended Trial, or not?

A. I have already said I had not heard of Admiral *Keppel*'s intended Trial.

Prisoner.

Mr. President, Captain *Hood* has already referred to the Evidence the Master of the *Robust* has given, may I beg to have that read to him?

Judge-advocate then read the Minutes taken upon Arnold's Examination.

Captain Hood.

May I be indulged to speak one Moment, to prove to the Court how very incorrect the Master is with respect to the Day; because I will appeal to the President of this Court, that on the 4th of *December* I applied for public Leave to the Admiralty, and arrived here the 7th, and the Admiral gave me Notice of it on the 8th. Business of Courts-Martial detained me here, and I did not take my Leave, as far as my Memory will go, till I received a Letter from the President, which was the 16th, if I mistake not. From the 16th of *December* to the 3d of *January* I was in *London* upon public Leave. I only mention this to shew the Incongruence of People's Memories with respect to Time. This is an authentic Thing. I can produce the Admiralty Letters, I can produce the President's Letters, I can prove my Return to this Port was *Sunday*, I think the 3d of *January*, so that there makes a Space of Twenty Days, directly contrary to what the Master has said (not with any evil Intention, I am persuaded, to do me Injustice, but from not having Recollection).—Now, Sir, with regard to Logs, I will state another extraordinary Thing in the Log-Book of the *Robust*, subsequent to the 27th and 28th of *July*. The Master has said, I looked at the Log-Book every Day. I perhaps do pay rather more Attention than some others may do; I may pay less than others may do. On the 9th of *September*, or on the 9th of *October*, now I cannot recollect whether it was the one Month or the other unless I was to be very exact in my Inquiries, I sent for the *Robust*'s Log-Book of the 13th, I believe, and when it came, the Mate and the Master had carried it on no farther than the 9th, so that there were Four Days omitted to be inserted; upon which I sent to the Master and asked him, How he came not to put every Day's Work into the Log Book? He said, he had got a rough Sheet, which he thought was as well. I immediately gave him Orders to go and insert the Day's Work in the Log. When he brought it up to me again, I found he had put the 13th Day's Work down, and had omitted the 10th, 11th, and 12th. I sent for him again, and asked him, how this had happened? He said, he did it in a Hurry. Now that is a Circumstance to shew you how very incorrect and uncertain it is to put any Data or Strength in Log-Books. These Three Days being left out, the Log-Book was obliged to be altered, for he took the whole Sheet out, which went back to other Days before. As to the Alteration of Log-Books, I do hope and wish, that upon this Occasion I may be the Person that

that may bring forth a better Mode of establishing Log-Books, or a total Rejection of them, for really they are in such a Way now—

A Member of the Court.

We shall never get through a Court-Martial if we are to follow this Practice.

A. Whenever you please to stop me I will sit down.

A Member.

Admiral Keppel desired that what the Master had declared upon Oath might be read; it has been read, and I presume the Admiral has some Question to ask upon it.

President.

I must beg Leave to answer the Evidence.—Do you mean from the Time of the Court-Martial, when you was prevented going?

A. Yes.

President.

I believe, if you recollect, it was very well known at that Time, though not officially, that Mr. Keppel was to be tried.

A. I know that. I only mean, that the Master was incorrect as to Time, when I had not seen the Log-Book for a Month.

Court.

Do you recollect the Time the Alterations were made?

A. I do not pretend to say the Day; I have told the Honourable Admiral already, I do not know the Day, and that I submitted that to the Master's Recollection, and if he says it is after the Time, I must stand by it if he says so; but if Admiral Keppel is not satisfied, to be sure he must carry it on as far as he thinks proper. I speak to the Residue of the Time that I asked for Leave, not to the Time when I went to London, it was well known then, that was the 16th or 17th.

Prisoner asked,

Q. Then am I to understand, upon the Oath you have taken, that you had not heard of my intended Trial when you directed those Alterations to be inserted?

A. I believe I have answered that Question already.

Q. It has not been understood, I beg you will answer it straight and direct?

A. I beg it may be read.

Question repeated.

A. I heard it as common Conversation, but no further; I could have it no other Way but by common Conversation.

Q. Had you heard, when the Alterations and Additions were inserted, that Sir Hugh Palliser had charged me with some Offence?

A. I never heard of any Charge, or what the Offences were. Nothing had come out to my Knowledge.

Q. Had you not then heard that Sir Hugh Palliser had exhibited a Charge against me, though you did not then know the Particulars of it?

A. I have already acknowledged that I had heard there was to be a Court-Martial, therefore there must be some Charge.

Q. Had you ever conversed or corresponded with Sir Hugh Palliser directly or indirectly, upon the Subject of Admiral Keppel's Trial, before you made the Alterations in your Log-Book?

A. I never conversed with Sir Hugh Palliser upon that Subject?

Q. Or corresponded?

A. Letters passed, but nothing relative to this Charge.

Q. Have you conversed with him on the Subject of the Log-Book?

A. No, I never did.

Q. Do you mean to say, that neither your Conversation nor Correspondence with Sir Hugh Palliser had been on the Subject of the Trial, or the Alterations and Additions to your Log-Book?

A. Never about the Log-Book, never a Word, and Sir Hugh Palliser never heard a Syllable of the Log-Book, till, I believe, after the Trial took place; never to my Knowledge.

Q. Am I to understand you when you say, there was nothing in regard to the Log-Book; that there was nothing in regard to the Trial neither.

A. At what Time?

Q. Before the Alterations were made in the Log-book?

A. No, never about the Trial, not in the smallest Degree.

Q. What then led you to discover four Months after the Transaction, any Error in that State of the Transactions of those two Days, which you did not observe at the Time?

A. I was led to the Discovery of Truth for the sake of myself.

Q. I must come to the Alterations which you admit to be made. In order to ascertain that, I must put this Question; Did your original Log-book state that the Admiral was making much Sail in the Evening of the 27th?

A. I don't recollect that it did.

Q. Do you declare that it did not?

A. I declared it Yesterday, that the Alterations were so and so; I can't unsay what I've said before, that is impossible.

Q. To what Hour does that Insertion in the Log-book relate?

A. It relates to Part of the Night, not any Part of the Day.

Q. What Hour is it put to?

A. It is put, as far as I recollect, to part of the First Watch, and Part of the Middle Watch; but I don't believe the Hour is put down. It is only a Narration running on without any Hour fixed; but as I am called upon to declare, I do it to the best of my Knowledge.

Prisoner.

Mr. President, as that Alteration in Captain Hood's Log-book tends to affect my Life, I shall ask him no more Questions.

Prosecutor desires to offer a few Words to the Court, in consequence of what Mr. Keppel has said.

Agreed to by the Court.

After the Prosecutor had proceeded a little in his Address, the Court disapproving, interrupted him, would not permit him to proceed, and ordered the Words which had been taken on the Minutes to be expunged.

Court to Captain Hood.

Q. Upon the whole of the Transactions of the 27th and 28th July, relative to the British Fleet, did it appear to you, as an old and experienced Officer, that Admiral Keppel, by his Conduct on either of those Days, tarnished the Honour of the British Flag?

A. Before I can give any Answer to the Question, I beg to know from the President, if any Part of my Evidence is to be taken?

Court.

Your Evidence is taken down, and stands Part of the Minutes.

A. I've long had the Honour of knowing the honourable Admiral, and still respect him, notwithstanding my Evidence will not be further required. His character is above my Praises; I've given my Evidence, as far as it goes, with Honour

our and Integrity; the Court must therefore judge and decide upon that Question.

Court.

This is not an Answer to the Question that has been asked. It is a Part of the Charge against the Admiral, and it is thought that every Captain commanding a *British* Ship on those two Days can acquaint the Court whether by the Misconduct and Neglect of Admiral *Keppel*, the Honour of the *British* Navy was tarnished?

A. The Court must know it from my Evidence, I cannot be a Judge.

Q. Did you see it was?

A. I have given my Evidence.

Court.

Your Evidence is to answer all Questions that are asked of you, you swear to speak the Truth, the whole Truth, and nothing but the Truth, so help you God.

A. I have done so.

The Witnesses withdrew.

Aaron Graham, *Purser of the Valiant, but late of the Arethusa, sworn.*

Prosecutor asked,

Q. Are those Minutes you have in your Hand the original Minutes taken at the Time, that is 27th July?

A. They are not the original ones, but a Copy of them.

Court asked,

Q. Where are the original ones?

A. The original Minutes are in a Book which was made particularly for the Quarter-deck, and was kept there constantly; but about three Weeks, or a Month after 27th July, they were missing. I took a Copy of them in the Morning of the 28th. The Mate took a Copy of them the Evening of the 27th, in order to insert them in the Log-book, as he had done every Day previous to the 27th.

Court asked,

Q. Have you ever compared them together.

A. I don't recollect that I have.

Q. Have you ever compared them with the Original?

A. I compared them at the Time I made the Copy.

Prosecutor asked,

Q. Do you know if they were entered in the Log-book by the Mate in the Evening of that Day?

A. I believe not.

Q. If entered afterwards?

A. I believe not.

Q. Do you know what is become of the original Minute-book you speak of?

A. I do not.

Q. I think you say in about three Weeks after it was missing—Has it never been seen since that Time?

A. I believe not, at least it has not by me.

Q. Do you know, or have you ever heard of any Body having seen it since that Time?

A. I have not.

Q. During these Three Weeks, in whose Custody was it kept?

A. It was in the Bittacle upon the Quarter-deck.

Q. Are the Minutes you are going to produce, an exact Copy of what was originally entered in the old Minute-book of that Day, and nothing more nor less of the Days mentioned?

A. There is nothing more; there is less, as I have not particularised when the Pendants were hoisted.

Q. Do you say it is not a complete Copy of the whole, as a Part is omitted?

A. I took the Copy of the Minutes more for my own Satisfaction than for public Inspection.

Q. If you omitted any Part of it, what was your Reason for it?

A. As I wished to know the particular Signals that were made, I took an Account of the general ones, not only of their being made, but of the Time at which they were made; but for the Pendants, I only put them down in the regular Order in which they were made.

Q. Do you mean in the original one, or in the Copy in your Hand?

A. They follow in the Copy in my Hand, as they stand in the Original, though the Time is not expressed against them?

Q. In the original Minute-book were the Signals by Pendants entered in regular Order with the Times against them?

A. They were.

Q. I should be glad to know your Reasons why you omitted the Times in the Copy?

A. As I observed before, it was more for my own Information than for public Inspection; I thought if I could be particular with respect to the general Signals, the Time of a particular Ship's Signal being made, was a Matter of no Consequence to me.

Q. In the Copy you are going to produce, is the Time omitted against every Ship's Signal, or only particular Ship's Signals?

A. Every Ship's Signals.

Q. When did you take the Copy you have now in your Hand? Is it the identical Copy you first made?

A. No; this is a fairer Copy from that.

Court asked,

Q. When did you make this Copy?

A. I believe Eight or Ten Days since.

Q. Is it an exact Copy from the other Copy?

A. It is.

Prosecutor asked,

Q. What was the First Signal on the 27th July?

A. The first that I took any Account of, was the Signal for tacking; Unions at the Fore and Mizentopmast-head at Thirty Minutes past Ten o'Clock. When I say it was made, it was repeated on board the *Arethusa*.

Q. The next Signal?

A. A red Flag at the Foretopmast-head; the Signal to engage Five Minutes after Eleven o'Clock.

Q. Do the Times of Signals being hauled down stand in your Book against the Signals first made, or do we hereafter meet with it in your Book as we go on?

A. They stand upon the Minutes as they are entered in this Minute-book.

Q. When was the Signal to engage hauled down?

A. Twenty-six Minutes after One.

Q. After the Signal was made for Battle, what was the next Signal?

A. A blue Pendant at the Ensign-staff.

Q. At what Time was that?

A. Two Minutes after One.

Court asked,

Q. What Signal was that?

A. The Signal for wearing.

Prosecutor asked,

Q. The next?

A. Union with a blue Flag with a red Cross Mizzen-peak.

Q. What the next ?

A. A blue and white striped Flag at the Mizentopmast-head ; a Signal to speak to a particular Ship to come within Hail, Fifty Minutes past One o'Clock.

Q. What Ship's Signal was it ?

A. It was a yellow Pendant at the Maintopmast-head, the *Proserpine's* Signal.

Q. At what Time ?

A. At Forty Minutes past One.

Q. Was that Signal for the *Proserpine* in your Minutes before the Signal you last spoke of ?

A. Not in the original Minutes, but in this, as I observed before ; this was only to refresh my Memory ; I recollect misplacing it.

Court asked,

Q. Then we are to understand the Union Flag with a blue Flag and a red Cross under it, was prior to the yellow Pendant ?

A. Yes.

Prosecutor asked,

Q. When was the Union Flag with the blue Flag and a red Cross under it hauled down ?

A. At Twenty-three Minutes past Three o'Clock.

Q. When was it again hoisted ?

A. At Thirty Minutes past Three.

Q. When again hauled down ?

A. On board the *Victory* I don't know : on board the *Arethusa* at Day-light the next Morning.

Q. What was the next Signal to the Union and blue Flag with a red Cross after being first hoisted ?

A. A blue Pendant at the Ensign-staff.

Q. At what Time ?

A. At Thirty Minutes past Two.

Q. What the next Signal to that ?

A. A yellow Pendant at the Maintopmast-head.

Q. At what Hour ?

A. I have not the Time expressed against the Pendants as I said before.

Q. What the next Signal in Order ?

A. A blue Flag at the Mizzen-peak.

Court asked,

Q. What Signal was that ?

A. A Signal for Ships to Windward to bear down into the Admiral's Wake.

Q. What Time ?

A. At Twenty-four Minutes past Three.

Prosecutor asked,

Q. When was that hauled down ?

A. At Thirty Minutes past Three.

Q. When was that hoisted again ?

A. At Thirteen Minutes past Six.

Q. When hauled down again ?

A. At Day-dawn the next Morning.

Q. What the next Signal in Order after Twenty-four Minutes past Three ?

A. Yellow Pendant at the Maintopmast-head ?

Q. Any Time to that ?

A. I have no Time to any of my Pendants.

Q. What Pendant was that ?

A. The *Proserpine's*.

Q. What was the next Signal ?

A. A blue and white striped Flag at the Maintopmast-head Thirty-three Minutes past Four for a particular Ship to make more Sail ; it was hauled down within a Minute or Two.

Q. Was any Ship's Signal out at that Time ?

A. I believe not.

Q. Does it appear that the *Duke's* Signal was made with that Flag ?

A. I have several Pendants out at the Time the Spanish Flag was out, but none while the blue and white striped Flag at the Maintopmast-head.

Court asked,

Q. Do you recollect what Ships the Pendants were for ?

A. I do not.

Q. Do you recollect the Colour of the Pendants ?

A. Yes.

Prosecutor asked,

Q. And the Order in which they were made ?

A. Yes ; but not the Times.

Q. Nor the Distance of the Times between them ?

A. No.

Q. When was the Spanish Flag hoisted ?

A. At Thirty-seven Minutes past Four.

Court asked,

Q. What was the first Pendant let fly after that ?

A. A red Pendant at the Mizentopmast-head.

Q. Was it immediately upon the Spanish Flag being hoisted ?

A. I can't recollect they were flying together, they must fly together, as that Flag was not hauled down till after Dark.

Q. What the next Pendant ?

A. A blue at the Starboard Mizentopmast Yard-arm.

Prosecutor asked,

Q. Do your Minutes mark the Ships those Pendants were for ?

A. They do not.

Q. Is it marked in the original Minute-book as to Names and Times ?

A. There was a Column for it, but I do not believe the Significations were ever inserted.

Q. As you can't name Ships or Times, then name the Pendants in the Order in which they were thrown out ?

A. Yellow Pendant at the Starboard Maintopmast Yard-arm. These are all the Pendants I have down.

Q. Are the three Pendants that you have mentioned all that were in the original Minute-book ?

A. There are two Signals intervened between them and a Number of other Pendants that were let fly, while the Spanish Flag was at the Maintopmast-head.

Q. Were the other Pendants you mention, and the Ships Names they particularly belonged to, particularised in the original Minute-book ?

A. The Times were, but whether the Significations were or not, I have already observed, I do not recollect.

Q. Do you mean to say the Pendants and the Times were inserted, without the Names of the particular Ships ?

A. I do.

Q. You said you omitted the Times in your last Copy, but that you had entered the Order in which each was made ; I should be glad to know your Reason why you have omitted both the Pendants and the Ships Names that were made with that Signal of the Spanish Flag ?

A. I have not omitted the Pendants, I said before, that two Signals intervened between the last three Pendants I mentioned, and the several others that were let fly, whilst the Spanish Flag was flying at the Maintopmast-head.

Court asked,

Q. What were those two Flags that intervened ?

A. A blue Flag, which was hoisted at the Ensign-staff

sign-staff by mistake. It remained there but three Minutes, and then was hoisted at the Mizzen-peak under the Signal for the Line. I don't mean that this Mistake happened on Board the *Victory*.

Prosecutor asked,

Q. At what Time?

A. It was hoisted by Mistake at the Ensign-staff Ten Minutes after Six, and at the Mizzen-peak Thirteen Minutes after Six.

Q. Were those the Two you alluded to?

A. Yes.

Q. You have said there was a Number of Pendants thrown out after that, can you name those Pendants?

A. I can.

Q. Name them?

A. A red Pendant at the Larboard Maintopfail Yard-arm. A blue Pendant at the same Place. A blue Pendant at the Larboard Fore-yard-arm. A white Pendant at the Larboard Mizentopfail Yard-arm. A white Pendant at the Foretopmast-head. A blue Pendant at the Starboard Maintopfail Yard-arm. A red Pendant at the same Place. A blue Pendant at the Maintopmast-head. Those are all the Signals I have any Account of.

Q. Have you any Distinction in point of Time between these several Pendants?

A. I have not.

Mr. Graham ordered to attend To-morrow, and bring the Copy he first made.

Adjourned, being Four o'Clock, till To-morrow at Ten o'Clock.

N I N T H D A Y.

SATURDAY, the 16th Day of JANUARY, 1779.

THE Court met according to Adjournment. The Prisoner was brought in, and Audience admitted.

Aaron Graham again called in.

Prosecutor asked,

Q. Have you got the first Copy made from the original Minute-book?

A. I have.

Q. When was that Copy taken?

A. The Morning after the 27th July.

Prosecutor.

I wish the Book now produced, may be examined with that the Witness spoke from Yesterday, to see if there is any Difference in points of Time and Signals.

The Judge Advocate taking the Book in his Hand, finds the Writing to be on Slate, and so much obliterated, as scarcely to be legible.

Q. What is the Name of the Mate who took the Copy from the original Minute-book, mentioned in your Examination of Yesterday?

A. Mr. Cawsey, Mate of the *Arethusa*.

Mr. Cawsey ordered to be summoned, and to bring with him the Ship's Log-book.

Prisoner asked,

Q. In the Examination of these two Minute-books, have I seen you or your Minute-book, or any Thing about either?

A. Neither.

Withdraw.

Captain John Carter Allen, of the Egmont, sworn.

Prosecutor asked,

Q. When did you first see the French Fleet?

A. I cannot justly say, the Log-book and Journal are left at Plymouth, I must refer you to them.

Q. When you first saw them, can you say what Time of the Day it was?

A. About Two o'Clock, or between Two and Three, I cannot be certain.

Q. During that Afternoon and Evening, did they appear to you to be forming a Line of Battle?

A. No.

Q. How were they situated with respect to the British Fleet?

A. I don't recollect; it is a long while since, I've not charged my Memory with any Thing of the Sort.

Q. Do you remember the Situation of them the following Morning?

A. No, I do not.

Q. Do you remember when you first saw them on the Morning of the 27th.

A. I do.

Q. About what Time?

A. Near Five o'Clock.

Q. When did you first discover them to be in a Line of Battle?

A. Not at all.

Q. On which Tack were they when you first saw them?

A. On the Larboard Tack.

Q. About what Time was that?

A. Between Five and Six.

Q. Did they appear to you, at no Time, to be in a Line of Battle?

A. No.

Q. At that Time on the Morning of the 27th, how was our Fleet situated with respect to each other?

A. I cannot positively answer to that, the *Egmont* was so far to Leeward, I cannot say I distinguished the Situation of the rest of the Ships to Windward.

Q. Do you remember the Admiral making a Signal for some of the Ships of the Vice of the Blue's Division, to chace to Windward?

A. I do.

Q. At what Time?

A. Nearest Six o'Clock.

Q. For how many Ships of that Division?

A. I do not know.

Q. Do you know the Names of any of the Ships particularly?

A. The *Egmont* was one.

Q. Can you name any of the others?

A. The

A. The *Terrible*; and I do not recollect any more.

Q. Were there several Pendants out, or only those Two?

A. I only recollect those Two.

Q. Did not a Number of Ships make sail and chase at that Time, in consequence of the Signal?

A. There might be Three or Four, I believe.

Q. Did those Ships, whatever the Numbers were, by chasing, separate and scatter that Part of the Fleet, more than they were before?

A. They made a greater Distance, no doubt, but they were not scattered.

Q. Did they all preserve an equal Distance from each other whilst they were chasing?

A. No, they did not.

Q. When did the *French* Fleet tack from the Larboard to come on the Starboard Tack?

A. I can't ascertain the Time.

Court asked,

Q. At the Time your Signal was thrown out to chase to Windward, what Judgment did you then form to yourself was the Cause of its being thrown out?

A. To get to Windward, and to close with the Admiral.

Q. When the *French* Fleet tacked, did they tack together or successively, in each other's Wake?

A. It is out of my Power to tell.

Q. At what Time did the *British* Fleet tack altogether by Signal?

A. The Signal was made to tack at Ten, but I had tacked before, so they did not all tack together.

Q. At what Time was the Signal made for Battle?

A. I saw it at a Quarter after Eleven.

Q. What Part of the *French* Line did you begin to engage?

A. I engaged the third Ship, but they were not in a Line.

Q. Were you, at that Time, accompanied with any other Ships of your Division, so near each other as to support each other?

A. I was so attentive to my own Ship, that I do not recollect any other than the *Terrible*, about a Mile from me.

Q. Was that a Mile ahead or astern?

A. Astern of me.

Q. How near was the Ship next ahead to you?

A. I don't recollect any other Ship being near me but the *French* Men of War, there being so much Smoke.

Q. In that Part of the Engagement did you receive considerable Damage from the Enemy?

A. I can't say I recollected receiving any Damage; we were not considering Damages—we were too attentive firing on the Enemy.

Q. Don't you think that the Damages you received in that Part of the Engagement were greater than they probably would have been, if you had fought in a Body with the rest of the Ships of the Vice of the Blue's Division?

A. No.

Q. If you had engaged in a Body with other Ships, would not they have shared in the Fire from the Enemy, which was wholly levelled at you when alone?

A. That is as the Enemy pleased. They might have fired at me alone, or they might not have fired at me at all.

Q. From the Place where you began to engage did you proceed till you joined some other Part of the *British* Fleet—and was that the Division you belonged to, or the Admiral's Division?

A. I proceeded and joined the Admiral's Division.

Q. In doing so, did you pass ahead of the Admiral of your own Division?

A. No.

Q. Did you pass astern of him?

A. I did not.

Q. In what Situation was the Vice-Admiral of the Blue from you, when you joined the Admiral's Division?

A. He was astern on the Lee Quarter.

Q. Was he in that Situation from you, when you first began to engage?

A. No.

Q. How then?

A. Upon the Lee Beam, about Three Miles and a Half, or Four perhaps, to the best of my Knowledge.

Q. When you joined the Admiral's own Division, did you continue to engage there?

A. I did.

Q. Did the Confusion of that Part of the Fleet you was in, occasion some of our own Ships to fire into your Ship?

A. I saw no Confusion at all.

Q. Was you fired into by any of our Ships?

A. I was.

Q. By what Ships?

A. The *Thunderer*.

Q. What Damages did you receive by her Shot?

A. The Sheet-anchor was broke, Two Cutters (Boats) were shot through, some other Shot in the Ship's Side; but I had no Men killed or wounded.

Q. Was not your Mainmast shot on the Larboard Side?

A. Not that I recollect.

Q. Was it not understood at the Time, that a Man was killed on the Quarter-deck by the *Thunderer's* Fire?

A. No. It was proved that he was killed by the *French* Three-deck Ship that laid along-side us.

Q. Did any other of our Ships fire over you, or into you, on that Day?

A. No.

Q. Whilst the *Thunderer* and you laid in that Position, did not the Enemy's Shot go over both, or hit both?

A. I cannot say that. They went through us, and into us.

Q. Were they within Distance for the Shot to reach you both?

A. Within Pistol-shot.

Q. Was you at this Time ahead or astern of the *Victory*?

A. Astern of the *Victory*.

Q. Did you proceed on in that Situation from her till you passed the Rear of the Enemy's Fleet?

A. I did.

Q. How far do you think the *British* Fleet was extended from Van to Rear at the Beginning of the Engagement?

A. I do not know.

Q. Was not the *Victory*, whilst she was in Action, supported by the whole of the Admiral's own Division, and by Part of the Ships of the Vice of the Blue's Division?

A. I cannot tell that there were many Ships engaged.

Q. Can you tell by what Ships the *Formidable* was supported during her engaging?

A. I cannot particularise; there were Three Ships astern of the *Egmont*, among which was the Vice of the Blue.

Q. After the Admiral, with the Ships of his Division and the others with him, had passed the

Rear

Rear of the Enemy, did he wear and stand towards them?

A. He did.

Q. Within what Distance from the Sternmost of the Enemy's Ships did he wear?

A. I cannot ascertain the Distance; it was not far.

Q. How long was it after he passed the rearmost Ship?

A. That I do not know neither.

Q. Did you continue standing beyond them longer than the Admiral did, or the same Time?

A. I continued on the Starboard Tack till Six in the Afternoon, having Four Feet Water in my Hold, which obliged me to continue that Tack.

Q. From the very brisk Fire kept up by our Ships that were engaged, do you think that the French Ships sustained Damage at least equal to ours?

A. I can answer for no Ships firing but my own, neither what Damage the Enemy received.

Q. Have you any Reason to think that the Damage was not in Proportion to the Damage our Ships received?

A. That I cannot say. I have Reason to suppose they must have been damaged, no doubt.

Q. After you ceased firing, did you take Notice of the Vice of the Blue, your own Division?

A. Not till Six o'Clock the same Evening.

Q. Did you see the *Victory* when she wore?

A. I have already said, I did see the *Victory* wear.

Q. Did you see the Vice of the Blue at that Time?

A. No.

Q. When was the Signal for Battle hauled down?

A. I cannot immediately say.

Q. Can you say whether it was before or after the Admiral wore?

A. I cannot.

Q. Did you observe the Admiral unbend his Maintop-sail whilst standing towards the Enemy?

Prisoner admitted it, adding, that it was bent again in Half an Hour.

Q. Where was the Vice of the Red and his Division about that Time?

A. I was so attentive repairing my own Damages, that I cannot immediately say.

Q. Did you see the *Victory* wear a second Time?

A. By the same Rule, I did not.

Q. When did you first see her with her Head to the Southward?

A. Between Four and Five o'Clock.

Q. Was there a Number of Ships about her at that Time?

A. There was.

Q. Did you take Notice when the French Fleet broke up their Line?

A. I did not perceive them in any Line, as I have said before.

Q. Did you observe them to be in a Crowd, different from what they had been during the Action?

A. I did not see them in a Crowd before or after the Action, nor at any Time.

Q. Did you observe when they began to form a Line of Battle, with their Heads to the Southward?

A. I did not.

Q. Was the Vice-Admiral of the Blue, and the Part of the Ships of his Division that were with him, the last that came out of Action?

A. I cannot tell.

Prisoner admitted they were the last.

Q. When the *Victory* wore a second Time, did she stand to the Southward?

A. I did not see the *Victory* wear the second Time; when I did see her, she was standing with her Head to the Southward, between Four and Five.

Q. Was the French Fleet then astern?

A. No, they were not.

Q. Where were they?

A. They appeared to me, the greatest Part of them, abreast of the Admiral to Leeward.

Q. At what Time are you speaking of?

A. About Six o'Clock in the Evening.

Q. Did you observe what Sail the *Victory* had during the Afternoon?

A. I was in such Position as not to be able to judge.

Q. Did you see the Blue Flag at the Mizzen-peak hoisted on board the *Victory* that Afternoon?

A. I did.

Q. About what Time?

A. About Five o'Clock, I think it was; I cannot be particular; it was as near that Time as I can judge.

Q. Was your Ship then to Leeward or to Windward of the *Victory*?

A. Ahead, and to Leeward withal.

Q. At the Time you mention, when you saw the French Fleet about Six o'Clock, were they forming in a Line of Battle?

A. They appeared to me to be forming.

Q. Did the Vice-Admiral of the Red bear down in the Admiral's Wake that Afternoon?

A. I did not see him bear down; but he was, or appeared to me, to be ahead of the Admiral.

Q. Before that, did you not take Notice of his being astern of the Admiral in his Wake?

A. I did not.

Q. At what Time that Evening did you get to Windward of the *Victory*?

A. I tack'd at Six o'Clock nearest, and was to Windward of the Admiral a little before Seven.

Q. Did you observe that Evening a Number of Ships Pendants out to bear down, and yours amongst them, on board the *Victory* and *Formidable*?

A. I did.

Q. Where was your Ship at that Time with respect to the *Formidable*?

A. To Windward.

Q. At what Time was that?

A. Near Seven o'Clock.

Q. Did you observe the *Fox* Frigate come to the *Formidable*?

A. I did not.

Q. After you had made Sail in consequence of that Signal, and your Pendant being hauled in, did you again bring to?

A. I did; for we had much Water in the Hold at that Time, going too fast for the People that were over-board to stop the Leaks.

Q. Did you observe any Signals in the Night made by the French Fleet, or were you informed of it at the Time?

A. I saw some Rockets hove, which, I apprehend, were from some of the French Ships.

Q. Did you perceive them from that Time to go away?

A. No, I did not.

Q. Were they, or Part of them, in Sight the next Morning?

A. I saw three Sail between Three and Four o'Clock in the Morning of the 28th.

Q. Were you informed there were any more Ships seen from your Mast-head that Morning, supposed to be Part of the French Fleet?

A. I neither was informed or did see any more than the Three Sail.

Q. What

Q. What did you judge those Three Sail to be, Line of Battle Ships, or Frigates?

A. I judged Two to be Line of Battle Ships, and One a Frigate; but in that I might be mistaken.

Q. How far do you think those Ships were from the *Brest* Fleet?

A. They might be six Miles.

Q. Do you speak of them all being at equal Distance; or the farthest of them?

A. The nearest of them.

Q. Do you mean at Day-light when you first saw them?

A. I do.

Q. Whereabout was the *Egmont* at that Time with respect to the rest of the *British* Fleet?

A. About four Miles astern of the Vice-Admiral of the Blue.

Q. Were not those *French* Ships nearer to Part of the *British* Fleet than they were to the *Egmont*?

A. I think they were.

Q. When you were four Miles astern of the *Formidable*, was you to Windward or to Leeward of the Wake of the Admiral, and the rest of the Fleet?

A. It appeared to me the *Egmont* was rather to Windward.

Q. Were those Three *French* Ships to Leeward of the *British* Fleet?

A. To Leeward.

Q. Did the Admiral lay the Fleet with their Heads to the Northward the next Morning?

A. Yes, the Morning of the 28th.

Q. What Latitude was your Ship in at Noon on the 28th, by Reckoning?

A. That the Log book and Journal will certify.

Q. Did not the Master give you his Day's Work every Day; and have you it with you?

A. He did, but I have it not with me.

Q. Do you remember what it was?

A. I do not.

Q. Do you remember, by the Master's Reckoning, what Distance *Ushant* was that Day?

A. No, by the same Rule.

Q. What Kind of Weather was it that Morning?

A. As near as I can recollect, it was hazy.

Q. What Weather as to Winds?

A. It blew fresh.

Prosecutor has no further Questions to ask him.

Prisoner asks,

Q. At the Time the Signal was made for the *Egmont* and other Ships of the Vice of the Blue's Division to chace to Windward in the Morning of the 27th, do you recollect what Sail the Vice of the Blue was under?

A. As near as I can recollect, Topails and Foreails, and Foretopmast-stayfail; from the Position the *Egmont* was in, being ahead, I cannot recollect seeing whether she had her Mainfail and Maintopmast-stayfail or not.

Q. As you are an Officer of Experience, when a Signal is made for your Ship, or any Ship, to chace to Windward, does it direct you to stand five Hours upon the same Tack you set off from, or to tack and ply to Windward in the Wind's Eye?

A. No, it does not; but to ply to Windward.

Q. If the other Ships had tacked as you did, whether they would not have got into Action as soon as you did, and have given you succour; and whether their standing so much longer, if they were extended and scattered, was not the Reason of it; or was it the Fault of the Signal to chace to Windward?

A. There is no Doubt, had the Ships tacked as I did, they might have been in Action as soon as the *Egmont*. It was not the Fault of the Signal to chace to Windward.

Q. If then they had got into Action nearly as

soon, and had bore down and closed with the Center Division, as the *Egmont* did, whether that would not have given Strength to the Center Division, and to the Division astern?

A. Undoubtedly it must.

Q. I think you have described yourself to have been, at the Time you were in Action, joined with the Ships of the Center Division, that the Vice-Admiral of the Blue, and two others of his Division, were astern of the *Egmont*; in the Situation the *Egmont* was then engaged, did not that give Succour and Strength to the Vice of the Blue?

A. It did.

Q. Some Stress has been laid on the *Thunderer's* firing through or over, or somehow hitting the *Egmont*; I would ask you, if in a Number of Ships following one another, you imagine that an Action could happen with so large a Number of Ships without that happening in some one Part of the Fleet engaged, and so obscured from one another by Smoke?

A. It often unavoidably happens in great Fleets.

Q. You have said you stood upon the Starboard Tack with the *Egmont* till Six o'Clock, in the Repair of his Damages; you have described to have seen the *Victory* upon the Starboard Tack between Four and Five o'Clock; did you observe, between Four and Five o'Clock, the *Victory* lead two or three Points from the Wind, down upon the Ships to Leeward?

A. I did observe it, and judged it was to succour the crippled Ships then laying repairing their Damages ahead, and to Leeward of the *British* Fleet.

Q. If the *Victory's* standing two or three Points from the Wind was nearing the Enemy's Fleet, or going from it?

A. It was nearing the Enemy's Fleet, and they appeared to me to edge away also.

Q. Do you know what other of the *English* Ships, between Four and Five o'Clock, were to Leeward, on the Lee-bow of the *Victory*, or somewhere near about the *Egmont*?

A. There were four Sail, beside the *Egmont*, to Leeward.

Q. When you joined the Vice-Admiral of the Blue, about Seven o'Clock, did you then see the Signal aboard the *Victory*, for a Line of Battle ahead, and a blue Flag under it?

A. I did.

Q. Had you ever seen it before in the Course of the Afternoon?

A. I had.

Q. When you was to Windward of the Vice-Admiral of the Blue, about Seven o'Clock, did you observe him to have the same Signals out as the *Victory* had?

A. I only saw the Signal for bearing down in the Vice-Admiral's Wake, with my Signal.

Q. Was the Condition your Ship was in, after the Action that Afternoon, and on the 28th in the Morning, such, as to permit you to chace like a Man of War; and was your Ship in a Condition to be entangled on a Lee-shore, on an Enemy's Coast, without being in imminent Danger?

A. She was not in a Condition to chace, much less to be entangled on a Lee shore on an Enemy's Coast.

Court asked,

Q. You will please to acquaint the Court of the Damages of the *Egmont*, after the Action of the 27th, in her Masts, Yards, Sails, Rigging, and Hull?

A. I must beg Leave to refer you to the Defects given in to the Commander in Chief, the Morning after the Action; they are too many and too long to trouble the Court with now. I will give Account of some of the worst of them. We received six Shot between the lower Part of the Wale on the Starboard

M

Side,

Side, and five Streaks below that. The Head of the Mainmast had two or three Shot through; the Mizzen-yard shot totally away; the Head of the Mizzenmast had two Shot; the Cross-jack and Mizzen-topfail-yard shot away; the Main-yard, the Starboard-yardarm shot off; one Shot through the Slings of the Mainyard; one Shot through the Larboard Quarter of the Mainyard, and the most of the Larboard Yard-arm shattered; the Head of the Foretopmast shot away; the Foreyard shot through in two Places; the Fore and Maintopsail Yard shot through; one Shot through the Center of the Foremast; the Head of the Foremast much shattered, the Main-stay shot through in the Middle.

The Court are satisfied with the Disability of the Ship to chase. Stop here.

Court asked,

Q. How many Hours after you was engaged, was it before your Ship was in a proper Condition

to renew the Fight, supposing the Admiral had judged it proper so to do?

A. Three Hours and an Half.

Q. Was it not more proper and prudent in the Admiral to lay to and repair his disabled Ships before he attempted a second Attack?

A. Assuredly.

Q. Upon the whole, did it appear to you, as an old experienced Officer, that Admiral Keppel, by his Conduct, either on the 27th or 28th July, tarnished the Honour of the British Navy?

A. No; and I should not take upon me to say thus much, if I had not been forty Years at Sea, and thirty-three Years an Officer. I look upon it the Admiral behaved with much Honour, instead of tarnishing the British Flag.

Adjourned, being Two o'Clock, till Ten o'Clock on Monday Morning.

TENTH DAY.

MONDAY, the 18th of JANUARY, 1779.

THE Court met according to Adjournment; but Rear-Admiral Roddam, one of the Members, having been taken ill last Night, and continuing much indisposed, which prevents his doing Business, agreed to adjourn till To-morrow at Ten o'Clock.

The Judge Advocate gave Notice thereof to the Prosecutor and Prisoner.

The Court is therefore adjourned till To-morrow at Ten o'Clock accordingly.

ELEVENTH DAY.

TUESDAY, the 19th of JANUARY, 1779.

COURT met according to Adjournment. Prisoner brought in and Audience admitted.

William Cawsey, *Mate of the Arethusa, sworn.*

Prosecutor asked,

Q. What Capacity are you in on board the *Arethusa*?

A. Master's Mate.

Q. Was you so the 27th and 28th July last?

A. Yes.

Q. Have you brought the Ship's Log-book?

A. Yes.

Q. Is that the original Ship's Log-book, kept from Day to Day, containing the very first Entries made therein, and without any Alteration or Addition since made, so far as respects from the 23d to the 30th July 1778, both Days inclusive?

A. Yes; I have made no Alterations in the Book.

Q. Has any Body else?

A. Not that I know of.

Q. Are those Signals in the Log-book the same as you entered on the 27th and 28th July?

A. Yes.

Q. What Time did you make the Entries of those Days?

A. The same Evening, from the Log-board.

Q. Was there a Minute-book kept of Signals?

A. There was.

Q. Did you take a Copy of that Minute-book for those Days?

A. I did.

Q. Did you enter the Signals from that Minute-book into the Log-book?

A. I did not; I had not Room to enter them.

Q. Did you usually enter Signals from the Minute-Book into the Log-book?

A. I did.

Q. Did you enter on other Days, as well as those Days?

A. I did, as will appear by the Book.

Q. What was the particular Reason you did not enter them on those two Days, as you usually did on other Days?

A. The Reason was, there was not Room in the Book, and they took up so much Time, and we were in Hurry and Confusion.

Q. Was there not Room on following Leaves; and were not the rest of the Leaves blank?

A. Yes, there was Room, but Captain Marshall had intended to keep a Minute-book, and the Master had told me it was not material.

Q. Then you understood you was forbid doing it, as being a Matter not necessary, because the Captain intended keeping a particular Account?

A. No, I did not understand I was forbid.

Q. Where is the original Minute-book of that Day?

A Paper of Signals was produced, and left with the Judge Advocate, which the Witness acknowledged to be his Writing.

A. The original Minute-book was lost; it was taken in Pencil; the Paper produced was copied from it.

Q. In whose Care was the Minute-book before it was lost?

A. It remained in the Bittacle-drawer on the Quarter-deck Day after Day.

Q. How long was it after that Time that the Minute-book was lost?

A. I believe it was eight or ten Days; I cannot be certain when it was missed.

Q. Where is the first Copy you took from it of those Days Works?

A. The Paper produced is the first Copy I took from the original Entry in Pencil.

Q. Have you had that in your Custody ever since?

A. No.

Q. What

Q. What did you do with it?

A. When the Book was missed, Captain Marshall applied to me, and I gave it to him.

Q. Have you examined it lately, to see if it is precisely the same, or whether there are any Alterations in it?

A. I think it is the same; I have a Copy of it that was taken afterwards.

Q. Have you ever made any Alterations or Additions in it since the Copy from the first Entry?

A. No, I have not.

Here the Witness was ordered to read the Paper. He read it accordingly—and the following is a Copy.

When hoisted.				Sort of Signal.	Where hoisted.	When hauled down.			
H.	M.	P. M. OR A. M.	Flag.			Guns	H.	M.	P. M. OR A. M.
11	5	A. M.	Flag	Red - - -	Foretopgallantmast-head -		1	26	P. M.
1	2	P. M.	Pendant	Blue - - -	Over the Ensign at the Ensign-staff		1	8	
1	40	Do.	Flags	Union and Blue with a red Cross	Mizen-peak, Unions upwards		3	20	
Do.	50		Flag	Striped blue and white -	Maintopmast-head -		2		
			Pendant	Yellow - - -	Maintopmast-head -		2		
2	50		Pendant	Blue - - -	Ensign-staff -		3		
3			Pendant	Yellow - - -	Maintopmast-head -		3	15	
3	24		Flag	Blue - - -	Mizen-peak -		3	30	
3	30		Flags	Union and Blue with a red Cross	Mizen-peak				
3	50		Pendant	Yellow - - -	Mizentopmast-head -		4	33	
			Pendant	White - - -	Maintopfail-yard-arm -		5	32	
4	33		Flag	Striped blue and white -	Maintopmast-head -		4	34	
4	37		Flag	Spanish Ensign -	Maintopgallantmast-head				
4	56		Pendant	Red - - -	Mizentopmast-head -		5	2	
4	57		Ditto	Blue - - -	Starboard Mizentopfail yard-arm				
5	22		Ditto	Yellow - - -	Maintopmast-head -		6	2	
5	32		Ditto	Yellow - - -	Starboard Mizentopfail yard-arm		6	3	
6	10		Flag	Blue - - -	Under the Line Ensign-staff -		6	13	
6	13		Ensign		Hoisted				
6	13		Flag	Blue - - -	Mizen-peak				
6	30		Pendant	Red and blue -	Larboard Maintopfail Yard-arm				
6	36		Ditto	Blue - - -	Larboard Foreyard-arm				
6	36		Ditto	White - - -	Larboard Mizentopfail Yard-arm				

Received from WILLIAM CAWSEY, in Court,
GEO. JACKSON, Judge-Advocate.

Prosecutor has no further Questions to ask, nor has the Prisoner.

Withdrew.

Captain Mark Robinson, of the Worcester, sworn.

Has Leave to make use of Minutes taken from a Diary he keeps every Day, containing the Transactions of the preceding Day.

Prosecutor asked,

Q. When was the French Fleet first seen?

A. On Thursday the 23d July.

Q. About what Time?

A. I believe about One o'Clock; I cannot be certain exactly as to Time.

Q. During that Afternoon and the Evening, did they appear to be forming a Line of Battle?

A. There was an Appearance of it, but I cannot be certain.

Q. On what Tack were the French Fleet at Dusk that Evening?

A. I believe on the Starboard Tack, standing to the Southward.

A. Was that towards the British Fleet or from them?

A. Rather towards them.

Q. Were they at that Time to Leeward of the British Fleet?

A. They were to Leeward about Sun-set.

Q. How was the Wind then?

A. Westerly I think, or W. N. W.

Q. As you have described the French Fleet to Leeward of the British Fleet, the Wind Westerly, standing to the Southward, were the French Fleet then between the British Fleet and the Port of Brest?

A. Most certainly.

Q. Where were they the next Morning?

A. In the N. W.

Q. Was not the British Fleet then between the French Fleet and the Port of Brest?

A. Certainly.

Q. What do you apprehend to be the Cause of the French Fleet getting to the N. W. and placing the British Fleet between them and Brest?

A. I apprehend it was owing to the Wind's shifting, as well as to the Fleet's laying to.

Q. Do you apprehend the French Fleet carried Sail for that Purpose?

A. I do not know.

Q. When they were in the N. W. the next Morning, had not they got the Weather-gage of the English?

A. They had.

Q. At what Time did you first see the French Fleet on the Morning of the 27th?

A. I did not myself see them till Five o'Clock.

Q. Did they appear to you to be in a Line of Battle at any Time in the Morning of the 27th.

A. They did in a straggling Line of Battle, but not a close one.

Q. At what Time do you speak of?

A. At Five o'Clock in the Morning.

Q. After that early Time in the Morning did their Line appear to you more perfect or more closed?

A. I did not observe immediately after, for I was engaged in making sail.

Q. In the Morning of the 27th were the British Fleet scattered and dispersed?

A. They were not in a Line of Battle, but in the usual State of Sailing.

Court asked,

Q. What was the Occasion of your making Sail in the Morning?

A. The Worcester's Signal was made on Board the Admiral for her to chase, with several other Ships, to Windward.

Q. What did you judge at that Time the Admiral meant by making that Signal?

Q. My Judgment was, as every Effort had been made to bring the French Fleet to Action after the 23d, that the Admiral's Intention was for the Ships, whose Signals were made to chase to Windward, to endeavour to bring the French Fleet to Action.

Prosecutor

Prosecutor asked,

Q. How many Ships Signals of the Vice of the Blue's Division were made at that Time?

A. I believe about that Time there were Six, I am not perfectly certain as to the Number.

Q. Did that Signal leave the Vice of the Blue with more than Four Ships of his Division?

A. No.

Q. Did that Signal cause that Part of the Fleet to be separated and dispersed?

A. It certainly extended and enlarged the Distance from the Center and chasing Ships.

Q. Did it not also separate them from their own Flag?

A. Certainly it did.

Q. Did the *British* Fleet tack altogether by Signal on the 27th to stand towards the *French* Fleet, and at what Hour?

A. At Ten o'Clock, or very near it, the Admiral made the general Signal for the Fleet to tack all together, and the chasing Ships complied with that Signal as soon after as could be done.

Q. Before the Signal was made for the Ships to chase, was the Vice-Admiral of the Blue and his Division ahead of the Admiral, something under his Lee-bow, or how were they situated about Five o'Clock in the Morning?

A. The Vice-Admiral of the Blue and his Division were ahead of the Commander in Chief, but a little on his Lee-bow.

Q. Were not the Ships that chased in different Situations, some ahead, some astern, some to Windward, and some to Leeward, at the Time the Signal was made for them to chase?

A. I cannot say, and can only answer for the Situation of the *Worcester*, the Ship I had the Honour to command.

Q. When Ships chase from different Situations as before supposed, and which differ in their Rate of Sailing, can they all come into proper Situations at one and the same Time for tacking?

A. No.

Q. Was it not the Admiral's Practice to make the Signal for Ships chasing to tack when he judged they ought to do so?

A. Generally so.

Q. Did he make any such Signal that Morning to the chasing Ships?

A. Not that we could observe.

The Admiral admitted he did not.

Q. Were not Four of the Ships that were sent out to chase, the whole of the Vice of the Blue's Division that were stationed in the Line of Battle, between the Vice-Admiral and the Admiral's own Division?

A. I have not yet mentioned any Ships that chased with me.

Q. Was the *Worcester* one?

A. Yes.

Q. Was the *Elizabeth* one?

A. Yes.

Q. Was the *Defiance* one?

A. I believe she was, but am not sure.

Q. Was the *Robust* one?

A. Yes.

Q. Did not the taking those Ships away leave a wide Space between the *Formidable* and the Admiral's own Division?

A. It certainly extended the Distance to what it was before.

Court asked,

Q. As you was in Chace at that Time, could you see the Distance the Vice-Admiral was from the Admiral an Hour or Two after you was in Chace?

A. It is impossible to ascertain the Distance.

Prosecutor asked,

Q. If those Four Ships had been permitted to

take their Station, instead of chasing, would not the Two Divisions of the Fleet, the Center and Vice-Admiral of the Blue, have been more connected, than after those Ships were sent to chase, and were separated?

A. Undoubtedly they would.

Q. Do you think that Ships proceeding along an Enemy's Line singly, are exposed to more or less Damage from the Enemy, than if a Number of Ships proceeded closely connected together, so as to support each other?

A. Undoubtedly; supposing the Enemy's Line to be compact and close?

Q. Did not the chasing Ships, so far as you know, come into Action separately and at considerable Distances from each other?

A. The Four Ships that chased together came into Action separately and at some considerable Distance from one another.

Q. Was any Ship near to you so as to be of Support to each other?

A. I do not know the Time you allude to, I was Two Hours in Action, consequently nearer sometimes one Ship than another.

Q. Did Part of the chasing Ships go ahead and join the Center Division?

A. I really do not know.

Q. If the Six Ships had not been taken from the Vice of the Blue and sent out to chase, might not the Vice of the Blue with his whole Division have gone into Action in a connected Body, and supported each other.

A. Yes, I should think so.

Court asked,

Q. Do you think, if the Admiral had made a Signal for forming a regular Line, and had chased in that regular Line, he could have brought the *French* Fleet so soon to Action?

A. No, by no Means.

Prosecutor asked,

Q. Was it the Van Division, or the Ships of the Rear Division that began the Engagement?

A. About Eleven o'Clock or thereabouts, in the Morning, I observed the Van Division of the *British* Fleet engaging with the Enemy.

Q. You have said, during the Engagement you were at different Distances from different Ships, if at any Time during the Action those Ships were so far asunder as to be of Support to each other?

A. I do not think any of the Four chasing Ships within my View were near enough to be of Support to each other.

Q. Were there not Six Ships in all that chased?

A. Four, I declared before, I was sure of, I believe there were Two more, but I am not so clear in that; I believe the *Defiance* and *Egmont*; but they were at a greater Distance than the other Four.

Q. Do you think that the Damages you received in the Engagement were probably greater than they would have been if you had engaged in a Body with the rest of your own Division?

A. That depends greatly on Circumstances, the Enemy's Situation, and the Number of Ships I had engaged with.

Court asked,

Q. Was the Enemy's Line a close one when you engaged them?

A. No, far from it, they were much scattered.

Prosecutor asked,

Q. How far do you think the *British* Fleet was extended from Van to Rear at the Beginning of the Engagement?

A. I look upon it to be very difficult to ascertain Distances between Ship and Ship, but I thought

thought myself, who was in the Rear of the *British* Fleet, full Three Leagues from the Van when in Action. This was at Eleven o'Clock.

Q. In what Part of the *French* Fleet did you begin the Action?

A. I received the Fire of Two of the headmost Ships of the *French* Van at about Ten Minutes after Twelve o'Clock at Noon, for I had a very good Observation before I began the Action. I did not return the Shot of those Two Ships, they being at too great a Distance for my Shot to do Execution.

Q. What Ship did you begin the Action with?

A. I thought it was the Third Ship of the *French* Van, being close to me.

Q. Did any of the Enemy's Ships ahead of you bear down, as appeared to you, with Intention to cut you off?

A. Several of them did bear down, but I don't know their Motive. I apprehend it was to engage me close, which they did.

Q. Did any of them bear down astern of you, to rake you as they passed?

A. As I observed before, several Ships bore down to engage me; but one particularly bore down right before the Wind, I believe within Pistol-shot, under her Topsails—then starboarded her Helm, let fall her Foresail, stood under the *Worcester's* Stern, and raked her fore and aft.

Q. At what Distance was the nearest of our Ships from you at that Time?

A. I do not know what Ships were near me at that Time, but I believe the *Formidable* could not be a Mile from me—but I cannot be certain.

Q. Did you observe the *Formidable* when she went into Action?

A. In Intervals, when the Fire and Smoke were clear from me, I saw the *Formidable*, but do not know when she first went into Action.

Q. In the Course of the Engagement, what Ships remained astern of the *Formidable* from the Time you first saw her engaged?

A. There were Four Sail astern of the *Formidable*.

Q. Were they close, or at wide Distances from each other?

A. Wide Distances, or at least I did not observe them close; I was too much engaged with my own Ship to be clear.

Q. Did you observe the *Formidable* go with her Mizentopsail aback, to let those Ships close with her, during the whole Time she was engaged, or any Part of it, when you looked at her?

A. I did not see the Mizentopsail of the *Formidable* aback, but I observed that the *Worcester* came up with her faster at the latter Part of the Action than she had done before.

Q. At what Time did you pass the sternmost Ship of the Enemy?

A. About Five Minutes after Two o'Clock in the Afternoon.

Q. When the Admiral with the Van and Center Divisions, and the Ships with him, had passed the Rear of the Enemy, did they immediately wear, or tack and double upon the Enemy, in order to renew the Action?

A. I did not see them either wear or tack, but saw Sir *Robert Harland's* Division making Sail to Windward, and standing to the Northward—as I thought, towards the Enemy.

Court asked,

Q. Do you judge the Action would have been brought on that Day, if the Admiral had waited for the Fleet to have been more closely connected?

A. I do not think they would; for the *French* were using their utmost Efforts in the Morning to

avoid coming to Action, as they had done before from the 23d; afterwards they edged away, and bore down; undoubtedly, if the Wind had not shifted, I thought they would have availed themselves of it, and not come into Action at all.

Q. You have said, that the *Formidable* was a Mile ahead of you, and Four Ships astern of the *Formidable*—Was you the sternmost Ship of the *British* Fleet?

A. There are Two Hours Time Difference in that Question. When there were Four Ships astern of the *Formidable*, it was early in the Action; in the latter Part of it, a little before Two, or Half after One, I was not more than a Mile from the *Formidable*.

Prosecutor asked,

Q. Did the Admiral, with the Ships that had passed the Rear of the *French* Fleet with him, keep so near to the Enemy after they had passed, as to be in immediate Readiness to renew the Engagement, when the Vice of the Blue came out of it, or to countenance and support him at the Time he continued engaged, with the few Ships with him?

A. I did not see the Commander in Chief immediately afterwards, for they had done Action before we had, a considerable Time.

Q. The first Time after you ceased firing yourself, and did see the Admiral and the rest of the Fleet with him, were they then so near the *French* Ships as to have immediately renewed the Engagement?

A. No; I did not observe him so near. I observed, as soon as the *Worcester* came out of Action, the Signal for Battle was hauled down (how long it had been, I cannot say), and that Vice-Admiral Sir *Robert Harland*, with Part of his Division, were to Windward, had shortened Sail, and had brought to with the Maintopsail to the Mast, as appeared to me—but I cannot be positive.

Court asked,

Q. At the Time the *French* Ship raked you, what Tack was the *French* Fleet upon?

A. As I observed before, a Ship bore down right before the Wind, gave me a Broadside, then put the Helm a-starboard to bring her Head to the Northward—then edged away a little, and raked me fore and aft.

Prosecutor asked,

Q. At the Time you have mentioned, when you first took Notice of the Admiral after you had come out of Action, and you had observed the Signal for Battle was hauled down—how far, to your best Recollection and Judgment, was the Admiral then from the *Worcester*?

A. I cannot be clear as to Distance; when we came out of Action, we brought to as soon as we could get our Foresail up.

Q. After you came out of Action, did you observe the *Formidable's* Motion?

A. I did.

Q. Did you observe her wear, and lay her Head towards the Enemy, immediately after she came out of Action?

A. The first Time I observed the *Formidable*, I thought she was laying to; but soon after I observed her wear, and lay her Head to the Northward, towards the Enemy.

Q. At what Distance do you judge she was then from the sternmost of the Enemy?

A. I cannot tell.

Q. Whilst she was wearing, did you observe the sternmost of the *French* Ships fire her Stern-chase at her?

A. I did not.

Q. If the Admiral with the Body of the Fleet

N

had

had tacked or wore within the same Distance from the Rear of the Enemy's Fleet as the *Formidable* did wear, might not the *French* have been immediately re-attacked with that Part of the Fleet and Sir Robert Harland's Division, which you have described were then to Windward?

A. As for Sir Robert Harland's Division, or rather Part of them, they were well to Windward. I cannot ascertain the same of the Admiral's, for I could not see them so plain. Had they been, as Sir Robert Harland's was, to Windward, had he had sufficient Ships to attack the *French*, I am very clear he might have done it. But I cannot say that of the Commander in Chief, because I could not see him so plain. I saw the Vice-Admiral of the Red to Windward, with Part of his Division, or it might be the Whole.

Q. I desire you will speak to that Part of the Question which supposes, that if the Admiral had wore as near to the Rear of the *French* as the *Formidable* did?

A. When the *Formidable* wore, I apprehended she was in a Line with the *French* Fleet, or Part of them; consequently, if the Commander in Chief had been in the same Situation with the *Formidable*, and his Ships in a proper Condition for Action, he might then have brought the *French* Fleet to Action again. But this is Matter of Opinion and Conjecture only.

Q. From the very brisk Fire that was kept up by our Ships that Day, have you any Reason to suppose the *French* Ships were not damaged in Proportion to the *English*?

A. If I judge of the *French* by myself, I make no Doubt but they received considerable Damage. One Ship particularly I saw bear away, which had lost her Main-yard, with a Frigate to attend her.

Court asked,

Q. As you passed from the Van of the *French* Fleet to the Rear, when you came out of Action, did it appear to you that the *French* Fleet had received as much Damage in their Masts, Yards, and Sails, as the *English* Fleet had done?

A. As I could form no Judgment at that Time of the Damage the whole of the *English* Fleet had sustained, I can form no Judgment of the Comparison between the Damages of the *English* and *French* Fleets in general; but I observed that the *French* Fleet had sustained considerable Damage in the Action as they passed me, most of them having been in Action before—I mean as to their Sails and Rigging.

Q. Except the Ship that bore away with her Main-yard gone, and the Frigate that attended her, did you see any other of the *French* Line that had lost their Masts or Yards?

A. I do not recollect.

Q. Was there any Appearance of any other Ship, either *English* or *French*, being totally disabled by the Loss of their Masts or Yards, or any Masts?

A. I do not recollect the carrying away of Masts in either of the Fleets.

Prosecutor asked,

Q. When the *Formidable* wore, and laid her Head towards the Enemy, did you do so in the *Worcester*?

A. I did.

Q. Whilst the *Formidable* and your Ship were laying with their Heads towards the Enemy, did you observe any of the *French* Ships make Sail towards them?

A. Yes, several.

Q. Was that the Reason of your wearing again, and standing to the Body of the Fleet?

A. It was.

Q. Did the *Formidable* do the same about the same Time?

A. There was very little Difference of Time between the *Formidable* and *Worcester*'s wearing, to stand with their Heads to the Southward, towards our Fleet.

Q. After you had wore and stood towards the Admiral, did he appear to you to be alone, or with the Body of the Fleet about him?

A. There were several Ships that passed me before the Admiral came up. I think so. I was so much engaged in the Repairs of my own Ship, I did not take Notice of the Condition of the Admiral's Ship.

Court asked,

Q. Was the *Worcester* in Condition to renew the Action after she wore the first Time?

A. No, by no Means.

Q. Give an Account of the most considerable Damages your Ship sustained in the Action.

A. In the first place, my Maintopmast was shot more than two-thirds through, Six Feet above the Cap, several Shot through and through the Foremast and Bowspit; one particularly in the Bowspit, just within the Gammoning, with a Forty-two Pounder. The Mizzen-yard was shot through in several Places, a great many Shots through her Sides and Stern-frame. Most of the standing and running Rigging shot to Pieces, and all the Sails, especially the Maintop-sail, which was all blown into Pendants; both the Fore-stays, Main-stays, and Back-stays were shot. In short, almost all the standing and running Rigging were shot, and there are now in the Foremast several Shot cased in, which we durst not open.

Q. Then in the Condition you have represented the *Worcester* to be after the Action, supposing the Admiral had wore, could you have been in a State to have assisted him in case he had thought proper to re-attack the Enemy?

A. Not immediately; by no Means.

Q. How long do you think it would have been before you could be in a Condition?

A. We were upwards of Three Hours and a Half before we could edge down to get into our Station. I could not get her ready before.

Prosecutor asked,

Q. When the Admiral had his Head towards the *French* Fleet, did you observe when he wore again to stand to the Southward?

A. I cannot be particular as to the Time, but about Four o'Clock in the Afternoon, I observed the Admiral with the Signal for the Line ahead standing to the Southward.

Q. Did you observe the *Victory* and *Formidable* meet?

A. I did not.

Q. When the *Formidable* and *Worcester* wore a second Time, and laid with their Heads towards the Admiral, did you observe those *French* Ships you have mentioned making Sail towards them, edge away and begin to form a new Line of Battle, steering somewhat to Leeward of the *British* Fleet?

A. Yes; I saw them undoubtedly edge away, and I thought they were forming a Line again to Leeward of the *British* Fleet.

Q. When the *Worcester* had wore, and laid her Head to the Southward, was the Body of the *French* Fleet then astern, or nearly so, or in what Position with respect to the *Worcester*?

A. The Body of the *French* Fleet, so near as I can recollect, was astern of the *Worcester* to Leeward withal, and forming into a Line of Battle, I think, with their Starboard Tacks on board, and

and their Heads to the Southward, as it appeared to me.

Q. I think you have said your Ship was not in a Condition immediately to renew the Attack. If you had come along-side of a *French* Ship that might be supposed to have received as much Damage in the Engagement as yourself, was your Loss of Men so great, or the Number of your Guns so disabled, that you could not have engaged such Ship?

A. Engaged him! If he had been complaisant enough to have laid along-side of me, I would have engaged him so long as I had a Barrel of Powder on board. I had no Guns dismounted.

Q. During that Afternoon was you in the Admiral's Wake, or nearly so, and at what Time?

A. I was astern of the Admiral, and to Leeward withal, and got into my Station in the Line about Six o'Clock in the Evening, or rather before.

Q. In what Situation was you the Morning of the 28th with respect to the *Victory* at Daylight?

A. I was pretty well in my Station in the Vice Admiral of the Blue's Division. The *Victory* was ahead, and to Windward withal.

Q. Did you see any of the *French* Ships that Morning?

A. I saw Three large Ships, which I took to be *French*.

Q. Whereabouts were they?

A. On the Leebeam, or rather abaft it.

Q. At what Distance were they?

A. One of them, which I took to be a large Ship, was not more than a Mile and a Half from the *Worcester*, according to the best of my Judgment; the other Two were about three or four Miles.

Q. Were any of them, as they appeared to you, nearer any other Part of the *British* Fleet than they were to the *Worcester*?

A. I believe there were two Ships astern and to Leeward of the *Worcester*, nearer to them than I was.

Q. Were those Three Ships chased by the *British* Fleet, or any Part of them?

A. I did not see them chased.

Q. Do you know if the rest of the *French* Fleet were seen that Morning?

A. From the *Worcester* there were no other Ships seen at that Time.

Q. Was the Signal made for seeing them by any other Ships of the *British* Fleet?

A. I did not see any Signals made, but I observed on board the *Victory* two or three Ships Signals made, as I apprehended, for Ships to chase, but I did not see the chasing Flag.

Q. Was you informed by any of your Officers of some Signals having been made of seeing the *French* Fleet to the South-East?

A. None but the Three Ships we saw from the *Worcester*; we did not see the Body of the *French* Fleet from the Mast-head.

Q. Did those Three Ships crowd Sail from us, and which Way did they stand?

A. In the Morning early in the Dawn of the Day, they had much the same Sail set as we had, and kept the same Course. So soon as it became clear, and they made us to be the *British* Fleet, they bore away, and made all the Sail they possibly could from us.

Q. Which Way?

A. I cannot be certain as to the Points of the Compass, but it was nearly to the South-East, as I believe.

Q. In case the *British* Fleet had chased those Three Ships, and suppose the *French* Fleet to be in

the Direction they steered, was there not a Probability of our undamaged Ships coming up with their disabled Ships; and, in that Case, might we not have taken them? or if the rest of the Fleet had stayed to defend them, might not another Engagement have been brought on?

A. With respect to the chasing, there is no doubt of it but the undamaged Ships might have chased the Three Ships in Sight: as I saw nothing of the Body of the *French* Fleet, I can be no Judge of their Situation, or of what they would have done, as it depended wholly upon the Distance we were from *Ushant* or *Brest*, the Port the Three Ships seemed to be steering for.

Court asked,

Q. You say the Body of the *French* Fleet were not seen from the Mast-head of the *Worcester*. If Admiral *Keppel* had ordered the undamaged Ships to chase the Three Ships that were running away with all the Sail they could carry, do you think that the undamaged Ships might not have been led into the Mouth of the Enemy before our disabled Ships could have come up to their Assistance?

A. That depended wholly on the Distance between the Body of the *French* Fleet and the chasing Ships, and likewise whether the chasing Ships went better than the Three Ships chased.

Q. When did you last lose Sight of the *French* Fleet in the Night of the 27th?

A. I saw them very plainly between Eight and Nine o'Clock at the Distance of about Two Miles to Leeward of the *British* Fleet, and about Ten o'Clock at Night, or soon after, the Master and Fourth Lieutenant being upon the Deck, the former came and informed me, they saw two or three Rockets fired from the *French* Fleet, after which we saw nothing more of the Lights.

Q. How was the Wind in the Morning of the 28th when you discovered those Three Ships?

A. About W. N. W. with fresh Gales and hazy Weather.

Q. Was then the *Worcester* under your Command in Condition to go down upon an Enemy's Lee-shore, having a Port perhaps to Leeward, and begin a general Engagement?

A. The *Worcester* was in Condition to engage any Ship at that Time, but not to chase, or go upon a Lee-shore upon any Account whatever.

Prosecutor asked,

Q. In case the Fleet had chased nearly before the Wind on the 28th, could or could not the *Worcester* have carried all her Sails to have kept Company with them?

A. As the *Worcester's* Mainmast was not injured much, I apprehend I could have carried all her Sail before the Wind on that Mast, having got her Maintopmast fished and secured the Night before.

Q. What Latitude was the *Worcester* in at Noon on the 27th?

A. Lat. $48^{\circ} 32'$ N. by Observation, *Ushant* E. 40 Leagues.

Q. What at Noon on the 28th?

A. $48^{\circ} 16'$ N. by Observation, *Ushant* bore that Day N. 80° E. Distance 28 Leagues.

Q. In the Middle of Summer, as that was, supposing a Chace of 30 Leagues, was the Chance of having moderate and fair Weather, or having a Gale of Wind, the most probable?

A. The Wind and Weather at that Time were rather extraordinary, having blown fresh and hazy Weather for three or four Days before.

Court asked,

Q. During the Course of your Service have you

you not frequently in Summer-time known very severe and hard Gales of Wind?

A. Undoubtedly; and I have been near forty Years in the Service, but I think, at the same Time, we are not to expect much bad Weather in the Month of *July* and *August*.

Q. What Sort of Weather had you for three or four Days afterwards?

A. The next Day was very indifferent Weather, blowing fresh and hazy; as to the other Days I beg to refer to the Log-book. According to my own Diary, the 29th was squally, with Rain at Times. The 30th was moderate Breezes, cloudy, and likely to rain. The 31st, it was moderate and cloudy Weather, with Rain at Times, and the Wind Westerly.

Prosecutor asked,

Q. It being the Middle of Summer, and Short Nights, do you apprehend it would have been attended with any imminent Danger, if our Fleet had pursued that of the *French*, at least till we had seen them into Port, or had made the Land of *Ushant*?

A. That I apprehend depends upon the Certainty of our Distance, as we are frequently out in our Reckonings.

Q. Independent of Reckonings, my Question states till we had seen them into Port, or had made the Land of *Ushant*?

A. Had I been single, and in Chace of an Enemy, I should certainly have stood on till I made the Land, or judged myself near it; but as to a Fleet, it depended entirely upon the Situation of that Fleet—If the Fleet had been in Condition, I should not have hesitated about it.

Q. Are you acquainted with that Part of the *French Coast* near *Ushant*?

A. I am not so well acquainted as to run a Risk without a Master on board better acquainted than myself.

Q. Is *Ushant* the Bottom of a Bay, or is it the Extremity of the Coast?

A. *Ushant*, I apprehend, is an Island, and at the Extremity of that Island detached from the Main.

Q. In the Morning of the 28th, did the Admiral lay the Fleet with their Heads to the Northward?

A. He did.

Q. Before the Fleet had laid their Heads to the Northward, did you observe any Signals made for Ships to set up Rigging?

A. No, I did not; if I had, I should have made a Signal too.

Prosecutor has no more Questions to ask Captain Robinson.

Court asked,

Q. Upon the Whole, did it appear to you, as an old experienced Officer, that Admiral *Keppel* by his Conduct, either on the 27th and 28th *July*, tarnished the Honour of the *British Navy*?

A. No. I have had the Honour of knowing Admiral *Keppel* many Years—I always looked on him as an exceeding good Officer, and innately a good Man, and believe him to be so still, having no Reason to think to the contrary.

Court adjourned, being Half past Three o'Clock, till To-morrow Morning, Ten o'Clock.

T W E L F T H D A Y.

WEDNESDAY, the 20th of JANUARY, 1779.

COURT met according to Adjournment. Prisoner brought in, and Audience admitted.

Captain Robinson called in again.

Prisoner asked,

Q. When you say you saw the *French Fleet* in the Afternoon of 23d *July*, can you inform the Court what Force it consisted of?

A. I really cannot tell their Force; but I counted Forty-four Sail, large and small.

Q. How was the Vice Admiral of the Red's Division situated at that Time relative to the rest of the *British Fleet*?

A. I really do not know, I did not take particular Notice.

Q. Do you think that the *French*, any Time on the 23d, could make out the Force the *British Fleet* consisted of?

A. Upon my Word, I cannot say.

Q. Was you much nearer the *French Fleet* than the Red Division?

A. I believe we were, but cannot be certain. I did not take particular Notice at that Time.

Q. Did the Admiral pursue the *French Fleet* in the Afternoon of the 23d in a Line of Battle, carrying a deal of Sail?

A. He did.

Q. On the 27th *July*, in the Mornings how far was the Vice of the Blue and his Division to Leeward of the *Victory*, when the Signal was made to chace to Windward?

A. I was not on Deck when the Signal was made, but came soon after, which was after Five o'Clock; at which Time the *Victory* was astern, and to Windward withal; and I apprehend the *Victory* could not be less than two Miles. We were ahead with our Larboard Tacks aboard.

Q. Under what Sail were the Vice-Admiral of the Blue, and the Ships of his Division, at the Time you came upon Deck at Five o'Clock?

A. I cannot answer for the Sail of the Division in general; but the *Worcester* was under close-reefed Topsails, Foresails, Maintopmast-staysail, and Foretopmast-staysail.

Q. Do you understand that the Signal to chace to Windward obliges you to stand on one Tack, till the Admiral makes a Signal for the Fleet to tack?

A. I always understand when a Ship's Signal is made to chace to Windward, that the Captain is obliged to continue and make Sail in Compliance with the Signal, till he has got to such a Distance, as that he can plainly see the Admiral's Signal, to call him in, or tack, when the Admiral thinks proper.

Q. Would you not have tacked by that Signal, without the Admiral's making the Signal for you to tack?

A. I undoubtedly could have tacked my Ship.

Q. Was you authorised to tack?

A. Not in that Case, when we chased I apprehend I was not.

Q. Are there not Quarter Signals for Ships to chace upon, when the Admiral would have them chace

chace upon a Quarter, between whatever the Points may be between N. and W.

A. Certainly there are.

Court asked,

Q. When your Signal is made to chace to Windward, do you think you have Power to take the Advantage of the Wind, by tacking without Signal?

A. Yes, when I have an Object in View.

Q. Suppose you have not an Object in View, and your Signal is made from the Admiral to chace to Windward, do you not look upon it that it is your Duty to get as far to Windward in the Wind's Eye as you can?

A. I do.

Prisoner asked,

Q. Would you not have tacked before you did, without waiting for a Signal, if you had expected the Fleet to have closed with the Enemy so soon?

A. I certainly should have tacked, when I found the Object of our chasing was answered, which was that of bringing the *French Fleet* to Action, as I apprehended.

Q. When you saw the *English Fleet* engaging, did you keep your Wind, or could you by leading with a very rap full Sail close in with those Ships of your Division sooner than you did?

A. If I had kept my Wind, I could have weathered more than Half the *French Fleet*, the Wind having shifted two or three Points to the Westward, and I was obliged to keep away in order to join my Division as soon as I could, but in the mean time the *French Fleet* edged away, and I was afraid they would have cut me off from my Division.

Q. Could you imagine it possible for the Admiral to make a Signal that should put you in that Situation?

A. Not intentionally, I am clear.

Q. At the Time you describe Four Ships astern of the *Formidable*, what Ship was the nearest of those Four to the *Worcester*?

A. I believe it was the *Robust*.

Q. Was it at this Time you supposed yourself about a Mile from the *Formidable*?

A. No, by no means.

Q. Were there any Ships between you and the *Formidable* at the Time you came out of Action?

A. There were not.

Q. Inform the Court what became of the Four Ships you mention to have been astern of the *Formidable* during the Action, when you came out of Action?

A. Every one of the Ships ahead of the *Worcester* were engaging the Enemy, consequently stood on, and I believe, went to Leeward of the *Formidable*, to the best of my Knowledge, when the Smoke would admit of my seeing any of the Ships ahead of me, which was but seldom.

Q. Was the *Formidable's* Mizentopfail aback at the Time of any of those Ships passing, as you believe?

A. I never saw the *Formidable's* Mizentopfail aback.

Q. Did those Ships pass to Leeward and ahead of the *Formidable* when in Action, in consequence of the Admiral's Signal at Five o'Clock in the Morning to chace to Windward?

A. Had the Signal not been made to chace to Windward, it is possible those Ships would have been in a different Situation to what they were in at that Time.

Q. That does not answer my Question. My Question is, Whether they ran to Leeward of the *Formidable*, and ahead, in consequence of my Signal for them to chace at Five in the Morning to Windward?

A. I do not know their Reasons, it is impossible for me to know, for they came into Action before the *Worcester*, being ahead of me on that Tack.

Q. Do you mean they were never so closed as to give Support to the *Formidable* and to one another?

A. I do not know that during the Action, we were ever nearer than Half a Mile to one another, sometimes farther, to the best of my Knowledge, and when we could see for Smoke.

Q. Do you mean by sometimes, that it was at the first of the Action, or afterwards; because, sometimes may take in various Periods?

A. I cannot be particular as to the Times, but it was between Five Minutes after Twelve o'Clock at Noon, and Five Minutes after Two in the Afternoon, the Time I was engaged.

Q. Do you mean to say, that at no Time between those Periods, those Ships were not closed together nearer than Half a Mile to support each other?

A. I do not really recollect their being closer within that Time.

Q. Do you recollect they were not?

A. I really cannot judge of the Whole.

Q. As you have said the Three Ships past ahead of the *Formidable* and to Leeward during the Action, how do you reconcile that with their never being nearer than Half a Mile?

A. I did not say they passed ahead of the *Formidable*, they passed ahead of the *Worcester*, from the Situation they were in astern of the *Formidable*; that is, from their Situation between the *Formidable* and *Worcester*.

Q. If they were astern of the *Formidable* when in Action, and got out of Action before her; must they not have passed her during the Action?

A. I do not know.

Q. You have said your Ship was very much exposed by herself, and that you began Action with the Second or Third Ship of the Enemy's Van, and engaged till you got to the Rear; I should be glad to know what Number of Men you had killed and wounded?

A. I had but Three men killed and Five wounded; but some of the Men, I believe, died of their Wounds within two Days afterwards.

Q. Was the *Victory* standing towards the Enemy on the Larboard Tack when you first saw her after you came out of Action?

A. I think she was.

Q. Can you inform the Court the precise Time when you first wore, after you came out of Action, and laid your Head towards the Enemy?

A. I cannot fix the precise Time.

Q. Can you say any Time near it?

A. I believe, it was near Half after Two, but cannot be positive.

Q. How long did you stand on the Larboard Tack after you had wore towards the Enemy; and when you wore standing back to the Admiral, was it by Signal?

A. The Moment I wore, I brought to, I did not make sail, I was not in a Situation to make sail; when I wore to stand back, it was not by Signal. I did not see the Admiral.

Q. After you wore back to the Admiral, how near did the Admiral pass to the *Worcester*?

A. I really do not recollect how near, but it was no great Distance.

Q. Did you pass her?

A. I believe the Admiral passed the *Worcester*.

Q. Do you mean after the *Worcester* wore a second Time?

A. Yes.

O

Q. Was

Q. Was the Admiral then on the Larboard Tack?

A. I believe he was.

Q. Did you see the Signal flying at that Time on Board the Admiral, for the Line of Battle ahead?

A. No. I did not see the Signal for the Line of Battle ahead, at that Time. I did not see it till Four o'Clock.

Q. Had you no Officer appointed to observe the Admiral's Signals?

A. I had, but he was wounded early in the Action.

Q. When you passed the Admiral, or the Admiral passed you. Do you recollect at that Time, where the *Formidable* was?

A. To the best of my Recollection, she was to Windward of the *Worcester*.

Q. How near?

A. I cannot ascertain the Distance, but she was not far off; a very little Way I think.

Q. Do you say positively, that when you wore a second Time after the Action to stand towards the Admiral, several Ships passed you ahead of the *Victory* on the Larboard Tack?

A. I am positive that some Ships did; what they were, I do not know, and that one of the Ships, to the best of my Remembrance, hailed the *Worcester*, and told us to get out of the Way, for that the Admiral was coming up.

Q. Was the *Worcester* and that Ship to the Southward of the *Victory* at the Time that Ship hailed you?

A. I do not recollect.

Q. Whether that Ship was ahead or astern of the *Victory*, and to the Southward?

A. I really cannot recollect.

Q. Do you know of any other Ship?

A. I was so engaged in putting my Ship to Rights at that Time, I could not observe.

Q. At what Time did you first observe the French Fleet forming their Line on the Starboard Tack, standing towards the British Fleet on the 27th July after the Action?

A. I observed some of the French Ships standing with their Heads to the Southward, between Two and Three o'Clock, I cannot precisely tell the exact Time.

Q. Was it before you wore towards the English Admiral?

A. Yes.

Q. When you say, that you got into the Admiral's Wake, and in your Station at Six in the Evening of the 27th, do you mean that you was then in the Wake of the Vice of your own Division, or in the Wake of the Commander in Chief?

A. I mean, I was in my Station in the Vice-Admiral of the Blue's Division, and as near as I could get between the *Vengeance* and the *Elizabeth*; but that the Vice of the Blue was then to Windward of us, and the Commander in Chief ahead, and to Windward withal.

Q. Do you mean that the Commander in Chief was in the Weather-bow of the *Worcester*?

A. He certainly was to Windward, but how many Points upon the Bow, I do not recollect; he was ahead and to Windward withal.

Q. When the Admiral laid his Head to the Northward on the 28th, did he bring to on the Larboard Tack?

A. On the 28th in the Morning, the Admiral made the Signal to wear, laid his Head to the Northward and brought to, to the best of my Recollection.

Q. Did he stand before the Wind at all after wearing?

A. I do not recollect that—he referred to a Memorandum in his Pocket—then added—I believe you did make the Signal for the Line, and stood on a little while.

Q. After the Fleet was laid to on the Larboard Tack, was your Ship one of those that made the Signal for setting up Rigging?

A. I did not make the Signal at all. Nor did I see a Signal; I wanted it; but would not make the Signal.

Q. You have said, you were positive several Ships passed you ahead of the *Victory* on the Larboard Tack after the Action, and gave as a Reason for that Certainty, that you were hailed by a Ship that told you, to get out of the Way for the Admiral was coming up. What do you mean by saying, that you do not recollect whether the Ship that hailed you was ahead or astern of the Admiral?

A. Upon Recollection, I believe, he must have been ahead of the Admiral upon the Larboard Tack.

Q. Do you recollect, whether the Ship that hailed you was upon the Larboard or Starboard Tack?

A. As I have observed before, I cannot be positive.

Q. Do you recollect, whether it was a Two or a Three Deck Ship that hailed you?

A. I really do not.

Prisoner has no further Questions to put to the Witness.

Court asked,

Q. Do you recollect what Answer you gave to the Ship that hailed you?

A. Perfectly well.

Q. Acquaint the Court what it was.

A. My Answer was, they must see my Situation, and that it was not in my Power to get out of the Way, but would so soon as ever I could.

Q. When you was hailed, did you not naturally look to see where the Admiral was?

A. I did not see the Admiral, but they told me the Admiral was astern, coming up.

Q. What happened in consequence of that Answer? Did the Ship that hailed you pass by you to Windward or to Leeward, or bring to?

A. To the best of my Recollection, she passed on ahead of me—but whether to Windward or to Leeward, I cannot say.

Q. Did the Admiral pass you?

A. I do not recollect, being then so deeply engaged in getting my Ship into Condition again for Action.

Witness withdrew.

Joseph Sowell, Master of the *Worcester*, sworn.

Being asked, if he had heard the Charge, and answering he had not, it was read by the Judge Advocate.

Prosecutor asked,

(No. 1.) Q. Do you remember seeing Three Ships of the Enemy in the Morning of the 28th at Day-light?

A. Yes.

(No. 2.) Q. What Distance do you reckon they were from the British Fleet?

A. The sternmost Ship of the Three was from the *Worcester* a short Mile and a Half, as near as I can judge.

(No. 3.) Q. Was she nearer to any other Part of the British Fleet than the *Worcester*?

A. There

A. There was a Ship a little astern of the *Worcester*, rather a little on the Larboard Quarter, which did appear to me to be something nearer than the *Worcester* was.

(No. 4.) Q. Do you remember, when the *Worcester* came out of Action, at what Distance the Admiral and the Body of the Fleet were then beyond the Rear of the Enemy?

A. As near as I could judge, they were to the Southward of the *Worcester* about Two or Three Miles, their Heads towards the Enemy, with their Larboard Tacks on board.

(No. 5.) Q. Do you remember taking Notice of the Vice-Admiral of the Red and the Ships of his Division about that Time?

A. I remember seeing the Vice-Admiral of the Red, and some Ships with him, to Windward of the Admiral, and ahead withal.

(No. 6.) Q. Were they also upon the Larboard Tack?

A. The Ships I saw had their Larboard Tacks on board.

Prosecutor has no further Questions to ask the Witness.

Prisoner asked,

(No. 7.) Q. I shall trouble the Court but very little, except relative to the 28th, when he says they discovered the Ships in the Morning to Leeward on their Lee Quarter—that there was another Ship nearer—and he describes himself to have been within a Mile and a Half of those Ships—Did the *Worcester*, or did the Ship nearer to those Ships discovered, lay their Heads to those Ships so very near, or hoist any Signal to the Admiral, informing him that they were Enemies?

A. The *Worcester* did not, whether the other Ships did or not I cannot tell.

(No. 8.) Q. At what Time did the *Worcester* come out of the Action on the 27th?

A. About Two o'Clock.

(No. 9.) Q. When you came out of Action about Two o'Clock, did you then see the *Victory*?

A. I did.

Court asked,

(No. 10.) Q. Had your Ship's Signal been thrown out at the Time you saw those Three Ships, was she in a Condition to chase?

A. No.

Prisoner asked,

Q. You say you came out of Action about Two o'Clock, did you see the *Victory* then?

A. I did not.

Q. How soon then did you see her afterwards?

A. About Three o'Clock.

Q. Was she then on the Larboard Tack.

A. She was bearing down, and had the Signal flying for the Line of Battle.

Q. Did you at any Time see any Ships formed in a Line of Battle ahead or astern of her?

A. No, I did not; there were a great many Ships round her.

Q. Do you mean ahead of the *Victory*?

A. There were some ahead and some on each Side of her.

Q. Can you name any of them?

A. No, I cannot.

Q. Do you mean the Vice-Admiral of the Red and the Ships with him were of that Number?

A. They were to Windward of him, but cannot recollect whether any of those Ships bore down with him at that Time.

Q. Then you cannot name any one individual Ship?

A. Not one of them.

Q. When those Ships were so observed by you

at the Time you could not name one of them, can you say those Ships so round, and so ahead of the Admiral, were with their Larboard or Starboard Tacks on Board?

A. They were going down before the Wind, the Admiral having the Signal for the Line of Battle flying at the same Time.

Q. Are you quite exact as to the Time?

A. I cannot be certain; it was between Three and Four in the Afternoon.

Q. Did the *Worcester* wear and lay her Head towards the Enemy after she came out of Action?

A. She did.

Q. How long did she continue on that Tack before she wore again?

A. About Half an Hour.

Q. How near did she pass the *Victory*, standing on the Larboard Tack, after the *Worcester's* wearing a second Time and standing to the Southward?

A. About a Mile.

Q. Do you recollect what Time this was?

A. I cannot justly say the Time, but it was something after Three o'Clock.

Q. Do you recollect any Ship's hailing you, after this Time of passing the *Victory*?

A. I recollect, to the best of my Knowledge, there was a Ship that hailed us, and desired us to endeavour to make more Sail to get out of the Way of her, as the Admiral was then astern of her, and other Ships on each Side of her.

Q. Was that Ship then upon the Starboard or Larboard Tack?

A. Neither one or the other, she was coming down upon us right before the Wind.

Q. Do you recollect the Name of that Ship?

A. No.

Q. Nor whether she was a Two or a Three Deck Ship?

A. She was a Three Deck Ship.

Q. You have said the Admiral was coming down before the Wind, am I to understand that she was sailing before the Wind, or in a State of Wearing?

A. She was going before the Wind in a State of Wearing to haul up with her Starboard Tacks to form a Line of Battle.

Q. Did you see the Signal for wearing at that Time?

A. I did not.

Court asked,

Q. Did you see the Signal for the Line of Battle at that Time?

A. I did.

Prisoner asked,

Q. Is that the Time when you meant the Ships were ahead of the *Victory*?

A. No, afterwards.

Prisoner has no more Questions to ask the Witness.

Court asked,

Q. Inform the Court, when you came out of Action what Distance you were from the *Formidable*?

A. About a Quarter of a Mile.

Q. Did you make the Signal for setting up Rigging on the Morning of the 28th?

A. We did, and several other Ships.

Witness withdrew.

Lieutenant George Dunn, Second Lieutenant of the Worcester, sworn.

The Questions which had been put to Mr. Sowell, Numbers 1, 2, 3, 4, 5, 6, were, at the Desire

Desire of the Prosecutor, repeated to the Witness, whose Answers are as follows :

Prosecutor asked,

Q. (No. 1.) repeated.

A. I do.

Q. (No. 2.) repeated.

A. I believe the nearest Ship was about a Mile and a Half from the Lee-quarter of the *Worcester*.

Q. (No. 3.) repeated.

A. I believe there was a Ship astern of us rather nearer than the *Worcester*, but I am not certain of it.

Q. (No. 4.) repeated.

A. I do not recollect.

Q. (No. 5.) repeated.

A. I saw them upon our Weather-beam, as near as I can recollect.

Q. (No. 6.) repeated.

A. I think, to the best of my Remembrance, they were.

Q. When you saw the Vice-Admiral of the Red and his Division upon your Weather-beam, were they under Sail or laying to?

A. I think, to the best of my Remembrance, they were laying to.

Prosecutor had no further Questions to ask the Witness.

Court asked,

Q. Where were you quartered?

A. On the Lower-deck.

Prisoner's Questions to Mr. Sowell, Numbers 7, 8, and 9, were put to Mr. Dunn, and his Answers were as follows :

Q. (No. 7.) repeated.

A. I do not recollect they did.

Q. (No. 8.) repeated.

A. A little after Two o'Clock.

Q. (No. 9.) repeated.

A. I do not recollect I did.

The Court's Question to Mr. Sowell (No. 10.) was next repeated.

A. I think not.

The Prisoner having done with the Witness he withdrew.

Lieutenant John Robson, of the Worcester, called ;

But Report was made that he was ill, and unable to attend.

The Prosecutor called for Admiral Keppel's Letter to the Secretary of the Admiralty, dated 30th July, giving an Account of the Action on the 27th—Also for Admiral Keppel's Journal of the 27th and 28th July.—Mr. Keppel acknowledging them to be his, they were read by the Judge Advocate, and are in the following Words :

Victory, at Sea, July 30, 1778.

" S I R,

" MY Letters of the 23d and 24th Instant, by the *Peggy* and *Union* Cutters, acquainted you, for their Lordships Information, that I was in Pursuit, with the King's Fleet under my Command, of a numerous Fleet of *French* Ships of War.

" From that Time, till the 27th, the Winds constantly in the S. W. and N. W. Quarters, sometimes blowing strong, and the *French* Fleet always to Windward going off, I made Use of every Method to close in with them that was possible, keeping the King's Ships at the same Time collected, as much as the Nature of a Pursuit would admit of, and which became necessary

from the cautious Manner the *French* proceeded in, and the Disinclination that appeared in them to allow of my bringing the King's Ships close up to a regular Engagement: This left but little other Chance of getting in with them, than by seizing the Opportunity that offered, the Morning of the 27th, by the Wind's admitting of the Van of the King's Fleet under my Command leading up with, and closing with, their Center and Rear.

" The *French* began firing upon the Headmost of Vice-Admiral Sir *Robert Harland's* Division, and the Ships with him, as they led up; which Cannonade the leading Ships, and the Vice-Admiral soon returned, as did every Ship as they could close up: The Chace had occasioned their being extended, nevertheless they were all soon in Battle.

" The Fleets being upon different Tacks, passed each other very close; the Object of the *French* seemed to be the disabling the King's Ships in their Masts and Sails, in which they so far succeeded, as to prevent many of the Ships of my Fleet being able to follow me when I wore to stand after the *French* Fleet. This obliged me to wear again, to join those Ships, and thereby allowed of the *French* forming their Fleet again, and range it in a Line to Leeward of the King's Fleet towards the Close of the Day; which I did not discourage, but allowed of their doing it, without firing upon them, thinking they meant handsomely to try their Force with us the next Morning; but they had been so beaten in the Day, that they took the Advantage of the Night to go off.

" The Wind and Weather being such, that they could reach their own Shores before there was any Chance of the King's Fleet getting up with them, in the State the Ships were in, in their Masts, Yards, and Sails, left me no Choice of what was proper and adviseable to do.

" The spirited Conduct of Vice-Admiral Sir *Robert Harland*, Vice-Admiral Sir *Hugh Palliser*, and the Captains of the Fleet, supported by their Officers and Men, deserves much Commendation.

" A Journal of my Proceedings with the Fleet, since I left the *English* Land accompanies this.

" I shall omit nothing that lays with me, to get the Ships as soon as possible in Condition to be able to proceed on further Service.

" I send Captain *Faulkner*, Captain of the *Victory*, with this Account to their Lordships.

I am,

S I R,

Your most obedient and

very humble Servant,

A. KEPPEL."

Philip Stephens, Esq;

Secretary of the Admiralty.

" 27th July. S. W.—S. W. by W.—S. W.—S. W. by W.—S. W.—S. W. by W.—S. W. by W.—S. W. by W.

" Course, N. 57° 00' W. Distance, 52 Miles Latitude 48° 31' N. Longitude 2° 39' W.

" Ushant, S. 89° 00' E. Distance 36 Leagues.

" Fresh Breezes and cloudy Weather—8. Squally—took in the 3d Reef of the Topails—the *French* Fleet bore from W. S. W. to S. by W.—Wind S. W.—Course W. N. W. at Midnight—Fresh Gales and cloudy—at Daylight saw the *French* Fleet to Windward—the Vice Admiral of the Red and his Division well on the Weather-beam—the Vice of the Blue on the Lee Bow.—10. The *French* Admiral tacked to the Southward—I instantly made the Signal and tacked

after them—Half past 10.—the Wind at this Time veered, so as to let the King's Fleet lay up, for the Body of the *French* Fleet.—11. The *French* Admiral tacked again.—Half-past 11. observing the *French* engaged with the Headmost of Vice-Admiral Sir Robert Harland's Division, as they lead up—I made the Signal for Battle, and stood on in the *Victory*, the *French* Line on the contrary Tack, with their Heads to the Northward, at 5 Minutes before 12.—Perceiving we were near up with the *French* Admiral, I ordered the Mainsail to be hauled up. Soon after, the *French* Admiral, with the white Flag at the Maintopmast-head, began to engage the *Victory*, who had reserved her Fire till now.—Having passed the *French* Admiral, came on to their Vice-Admiral of the White, who bore down and engaged us. The *Victory* continued passing their Line till a Quarter before 1.—When we passed the Sternmost of their Ships—Vice-Admiral Sir Robert Harland, and all the Ships ahead of me, engaged the *French* as they passed by them, as did likewise Vice-Admiral Sir Hugh Palliser, with the Ships with them astern.

" 28th July. S. by E.—W.—N. by E.—W. by N.

" Course, S. 52° 00' E. Distance 35 Miles.—Latitude 48° 10' N. Longitude 2° 1' W.

" Ushant, N. 75° 00' E. Distance 27 Leagues.

" Fresh Breezes and cloudy Weather.—20 Minutes past 1. made the Signal and wore, and laid the Ships Heads towards the *French* Fleet.—2. Made the Signal for the Line ahead, perceiving several of the Ships so far disabled in their Masts and Sails, as not to be able to join me.—3. I wore again towards them—which gave an Opportunity for the *French* to form their Fleet again, and range it in a Line to Leeward of the King's Fleet, towards the Close of the Day—Stood on all Night with a moderate Sail, the Ships in a Line of Battle—the *French* Fleet in a Line to Leeward.—11 o'Clock, the *French* made some Signal by Rockets—at Day-break, perceived the *French* had taken the Advantage of the Night, to go off saw Three Sail to Leeward, which were *French* Ships, and bore away immediately upon seeing us; I made the Signal for some Ships to chase them—but most of the Ships being crippled in their Masts and Sails, I called them in again—Saw some Sails to Leeward from the Mast-head; considering, the Wind and Weather being such, that the *French* could reach their own Land, before there was any Chance of the King's Fleet getting up with them, in the crippled State it was, in Masts Yards, and Sails, I hauled to the Northward, to get the Channel open.—5. A. M. brought to, for the Ships to get themselves to Rights in their Masts and Rigging—At Noon made Sail—Fresh Breezes."

Captain John Bazeley of the *Formidable* sworn.

Prosecutor asked,

Q. Do you remember seeing the *French* Fleet on the Morning of the 27th July?

A. Yes.

Q. Did they at any Time appear to you to be in a Line of Battle?

A. They did.

Q. Do you remember the Situation of the Vice-Admiral of the Blue and his Division that Morning, with respect to the Admiral—whether they were ahead of him, and upon his Lee Bow, or how otherwise situated?

A. The Vice-Admiral of the Blue was upon

the Admiral's Lee Bow, and ahead withal with the Division—some Part of the Division upon the Weather Bow of the Vice-Admiral.

Q. Do you remember a Signal being made for Six Ships, or how many, of the Vice-Admiral of the Blue's Division to chase?

A. To the best of my Recollection, Six Ships of the Vice-Admiral of the Blue's Division.

Q. Did that Signal cause those Ships to be separated and dispersed from their Admiral, and from each other?

A. It caused those Ships to be extended from their Admiral—but whether separated from each other, I cannot recollect.

Q. In the Morning, when the Vice-Admiral with his Division were situated as you have described, were they not in a proper Situation, and at a proper Distance, to have readily taken their Stations in a Line of Battle, in case the Signal had been made?

A. They appeared so to me, if the Signal had been made to form a Line of Battle on the Larboard Tack.

Q. If all the Ships of that Division had been suffered to remain with their Admiral, might they not have gone into Action with him in a joint Body, so as to have supported each other?

A. Yes.

Q. Did the chasing Ships, so far as you know, come into Action separately, and at Distances from each other?

A. They appeared so to me, those that were astern.

Q. Did Part of them, by chasing, go ahead of the *Formidable*, and join the Center Division?

A. Yes, Two of them.

Q. Did those Ships being taken away from the Vice-Admiral leave him to go into Action equally supported as the other Flag-Officers?

A. No.

Q. Were any of the Ships of the Vice-Admiral of the Blue's Division within Gun-shot of the *Formidable*, when she began the Action, except the *Ocean* then to Leeward of her?

A. The nearest Ship that I recollect astern was not nearer than Half a Mile to her.

Q. During the Action were not Four of our Ships astern, not together, but at a Distance from each other?

A. They appeared so before the Action began, but afterwards I cannot answer to it.

Q. During the Time the *Formidable* was engaged, passing along the *French* Line, were any Ships so near to her as to have afforded Support to each other, except at one Time a Ship shot up under her Stern so close in the Thick of the Smoke, that to avoid boarding her, she was obliged to go to Leeward, which rendered her Fire useless?

A. After the *Formidable* had opened her Fire, I observed no Ship whatever, except the one the Vice-Admiral alludes to, coming under her Lee.

Q. What Ship was that supposed to be?

A. I cannot speak to that.

Q. With what Part of the *French* Line did the *Formidable* begin close Action?

A. One Ship ahead of the *French* Admiral, in the Center.

Q. Did she receive the Fire of several Ships of the Enemy's Van, which she did not return till she began close Action herself?

A. Yes.

Q. Do you think the Damages the *Formidable* received were much greater than they probably would have been, if she had fought in a Body with the rest of the Ships of the Vice-Admiral of the Blue's Division?

P

A. Most

A. Most undoubtedly.

Q. As you passed along the *French Line*, did they appear to you to be more irregular than might reasonably be expected, after having engaged with the Van and Center of the *British Fleet*?

A. No.

Q. The Four Ships you spoke of astern being at a Distance, did not the *Formidable* back her Mizentopfail, in order to proceed slowly, to give Time for those Ships to close?

A. The Mizentopfail was backed, to prevent her from shooting ahead, to avoid the *Ocean's Fire*, and was also for the Ships to close us astern.

Q. At what Distance was she from the Enemy's Ship with which she first began to engage—Was it within Musquet-shot?

A. Yes.

Q. Did she pass within the same Distance from every other Ship, till she passed the Rear of the Enemy's Line?

A. Nearer to some, and at a greater Distance from others.

Q. I think you have said, some of the Vice-Admiral of the Blue's Division joined the Center Division—Then was not the Admiral supported by the whole of his own Division, and that Part of the Vice-Admiral of the Blue's?

A. I have said, Two of the Vice-Admiral's Division had passed—but what Number of Ships the Admiral was supported by, I cannot tell.

Q. In passing along the Enemy's Line, did it or did it not appear to you, that several of them were much damaged, they not keeping up so brisk a Fire as the rest?

A. I did not observe any particular Damage that any of their Ships had received, but that the Center Admiral and two other Ships returned the *Formidable* very little Fire.

Q. Did you observe one of them disabled, and run down to Leeward out of the Line with a Frigate, after the *Formidable* passed them?

A. One Ship with her Main-yard down quitted the Line, attended by another Ship.

Q. How long upon the whole do you reckon the *Formidable* was engaged?

A. I cannot speak exactly to Time, but, to the best of my Recollection, an Hour and forty Minutes.

Q. When the Admiral, with the Van and Center Divisions, had passed the Rear of the Enemy, did he immediately wear and double upon the Enemy, and continue the Engagement?

A. It is impossible for me to answer when the Admiral did wear.

Q. When the *Formidable* came the Length of the Rear of the Enemy's Fleet, was the Admiral, with the rest of the Fleet, so near to the Rear of the Enemy, as immediately to renew the Engagement, or to have succoured the Vice-Admiral of the Blue, in case the Rear of the Enemy had bore down to cut him off?

A. No.

Q. When the *Formidable* ceased firing, do you remember you and myself taking Notice that the Admiral, with the Body of the Fleet then with him, were standing towards us, and that I therefore ordered the Ship immediately to be wore?

A. I recollect, after the *Formidable* had passed the Enemy's Rear, that the Vice-Admiral of the Blue directed the Ship to be immediately wore; I then observed the *Victory*, with some Ships with her, standing towards the Enemy.

Q. At what Distance do you reckon the Admiral was, with those Ships with him at that Time, from the *Formidable*?

A. Two Miles.

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Q. When the *Formidable* wore, as you have before mentioned, was she then in the Stream of the Enemy's Line, or in the Wake of the sternmost Ship?

A. In the Wake of the sternmost Ship of the Enemy.

Q. About what Distance?

A. Random-shot.

Q. Was that the Time you speak of when the *Victory* was two Miles Distance from the *Formidable*?

A. At the Time she was wearing.

Q. Whilst the *Formidable* was wearing, did not the sternmost of the Enemy's Ships fire her Stern-chace at her, or edge away, and bring some of her Aft-guns to bear upon her?

A. I recollect, while her Helm was aweather, that one or two Shot were fired at her.

Court asked,

Q. Were they near enough to hit her?

A. Yes; the Shot passed close under her Counter.

Prosecutor asked,

Q. Whilst the *Formidable* lay with her Head towards the Enemy, were not the Officers and Men ordered to return to their Quarters, in Expectation of going again into Action when the Admiral should come up with the Fleet?

A. Yes, immediately after the Ship was wore.

Q. After laying that Way a little While, did you observe three of the Enemy's Ships making Sail directly towards the *Formidable*?

A. Yes, pointed immediately to her.

Q. At this Time was the *Formidable* nearer those French Ships than the *Victory* was to her?

A. The *Formidable* was nearer the *Victory* than those three Ships.

Q. When the *Formidable* wore again, did those French Ships edge away, and begin to form a Line of Battle ahead, pointing to Leeward of the English Fleet?

A. Yes.

Q. Did you see the Vice-Admiral of the Red and his Division at the Time the *Formidable* was laying with her Head towards the Enemy, and whereabouts were they?

A. I did see them to Windward.

Q. If the *Victory*, and the other Ships with the Admiral, had wore as near to the Rear of the Enemy as the *Formidable* did, after coming out of the Engagement, the Vice-Admiral of the Red having doubled on the Rear of the Enemy, might not the Engagement have been immediately renewed, so soon as the Vice-Admiral of the Blue came out of it, and prevented the Enemy forming a new Line?

A. I saw nothing to the contrary.

Court asked,

Q. If the Admiral with his Division, immediately after he came out of the Action, had wore as near as the *Formidable* did wear, the Vice-Admiral of the Blue and his Division being then in Action, would it not have endangered the Ships falling on board one another, one upon one Tack, and the other upon the other?

A. I apprehend not.

Prosecutor asked,

Q. Suppose the Admiral, with the Ships that were with him, had continued to advance towards the Enemy with the Signal for Battle flying, at the same Time the Vice of the Red had bore down to the Enemy, do you not conceive that the French, in that Case, might have been attacked, and prevented from forming a new Line, which they were then beginning to do, with their Heads towards the British Fleet?

A. If

A. If the Vice-Admiral of the Red with his Division had bore down, I conceive that it would have obstructed the *French* from forming their Line so immediately as they did.

Q. You have not attended to that Part of the Question which supposes, that the Admiral, with the rest of the Fleet, had advanced at the same Time.

A. If the Admiral had advanced with his Ships, it would very much have assisted in obstructing the forming the *French* Line.

Court asked,

Q. Do you know the State of the Admiral's Ships that were about him?

A. No.

Q. Do you know the State of the Vice of the Red's Division?

A. I know the State of no Ship but the one I commanded in Battle.

Q. What Condition was the *Formidable* in when she came out of Action?

A. I beg to refer to my Minutes (which was agreed to):—All the Sails that were set were cut to Pieces—Jib and all the Stayails ———

He was flopt, and the following Question put.

Court asked,

Q. Was she in general very much damaged at this Time?

A. Yes, she was.

Q. Was she immediately fit to go into Action again?

A. Immediately fit to go into Action, but not to pursue an Enemy.

Captain Bazely withdrew.

Adjourned, being Half past Three, till Tomorrow at Ten o'Clock.

THIRTEENTH DAY.

THURSDAY, the 21st Day of JANUARY, 1779.

THE Court met according to Adjournment.

Prisoner brought in, and Audience admitted.

Captain Bazely called in again.

Prosecutor asked,

Q. If the Admiral at that Time did not think fit to re-attack, except in a Line of Battle, might he not have immediately formed one by making the Signal for the Vice of the Red and his Division, who were then to Windward, to take the Lead on that Tack, in place of the Vice-Admiral of the Blue, who had just then come out of Action?

A. I saw nothing to the contrary.

Q. Did the Enemy, from their Motions, shew a Disposition towards renewing the Engagement?

A. Not that I saw, till after they began to form a Line to Leeward.

Q. Did the *British* Fleet appear to avoid renewing the Action?

A. Yes.

Q. After the *Formidable* wore a second Time, did the *Victory* and *Formidable* meet?

A. They passed each other.

Q. When the *Victory* and *Formidable* passed each other, did the *Victory* stand on, or did she wear under the *Formidable*'s Stern?

A. She wore astern of the *Formidable*.

Q. Did she first run to Leeward, and afterwards haul her Wind?

A. She appeared to me to go from the Wind.

Q. Did this leave the *Formidable* astern, and to Windward withal, of her Wake?

A. Yes.

Q. When the *Victory* had wore, and got a little to Leeward, as you describe, did she not then haul her Wind to the Southward?

A. She appeared so to do to me.

Q. Were not the *French* Fleet then astern?

A. Yes.

Q. Did not the *Victory* continue to stand the same Way the rest of the Afternoon?

A. Yes.

Q. And the following Night?

A. Till Day-light the next Morning.

Q. Do you recollect what Sail the *Victory* carried during the Afternoon?

A. I do not recollect that Particular.

Q. Did not the *Victory* always outfail the *Formidable* with the same Sail?

A. Yes.

Q. After the *Victory* was standing to the Southward, did the *French* stand the same Way, pointing somewhat to Leeward of the *British* Fleet?

A. Yes.

Q. Did the Vice-Admiral of the Red with his Division bear down into the Admiral's Wake that Afternoon?

A. Yes.

Q. Was that his own or the Vice-Admiral of the Blue's Station on that Tack?

A. In a Line of Battle on the Starboard Tack, it was the Vice-Admiral of the Blue's Station.

Q. Do you know whether that was done in consequence of a Signal flying, or by particular Order from the Commander in Chief?

A. I do not know.

Q. Did you observe the Vice-Admiral of the Red afterwards make Sail to get into his own Station ahead of the Admiral?

A. Yes.

Q. From the various Motions of the Admiral during that Afternoon, did you conclude that he had no Intention to renew the Engagement till the next Morning?

A. It appeared so to me, and I expressed those my Sentiments to the Vice-Admiral of the Blue at the Time.

Court asked,

Q. When was that?

A. The Time between the Signal for Battle being hauled down, and the Fleet pointing to the Southward at the Time it was dark, when he sent for me ast from the Forecastle. The Ship was so much in Confusion, that I could not attend to any particular Hour.

Q. Do you remember the Conversation that passed between the Captain of the *Fox* and the Vice-Admiral?

A. I never heard the *Fox* hail the Vice-Admiral.

Q. Did you see the *Fox* come under the Vice-Admiral's Stern?

A. I

A. I did not see the *Fox* till I heard her Ship's Company cheer the *Formidable*.

Q. Was you not informed of what brought the *Fox* there?

A. Not at that Time.

Q. At what Time afterwards?

A. After Dark.

Prosecutor asked,

Q. How far do you reckon the *Formidable* might be from the *Victory* within Half an Hour after the *Victory* passed to Leeward of her?

A. Not more than Half a Mile. I understand the Question is the first Half Hour after she passed under her Lee.

The Prosecutor says this was his Meaning.

Q. After the Admiral stood to the Southward, as before mentioned, did the *Formidable* first haul out of the Way of other Ships to take their Stations between her and the *Victory*?

A. Yes.

Q. How many Ships in a Line of Battle were stationed between the *Victory* and *Formidable*?

A. The *Formidable* was the Ninth Ship in the Line of Battle; so there were Eight between.

Q. After the *Formidable* had so got out of the Way of other Ships, did she not stand after the Admiral with all the Sail she could set, and trimmed as well as the Condition of her Sails and Rigging would admit of?

A. Yes.

Q. Did not the *Victory*, notwithstanding, increase her Distance during the whole Afternoon?

A. Yes.

Q. Did not the *Formidable* steer the whole Afternoon after the Admiral, keeping him a little open on her Lee-bow?

A. Yes.

Q. Was not that a proper Course for getting into her Station in the Line of Battle, if she could have come up with the Admiral?

A. Yes; I judged it so at the Time.

Q. So soon as the Admiral wore, and stood to the Southward, were not the Officers and all Hands on board the *Formidable* set to Work to get the Rigging knotted and spliced, and to repair her Damages?

A. Yes.

Q. Do you recollect the Distribution of the Officers that was made for that Purpose?

A. Yes.

Q. Just mention them, so far as relates to yourself and Lieutenants?

The Court observed this did not relate to the Charge. Agreed, that the Question ought not to be put.

Q. Do you remember the *Fox* coming to the *Formidable*?

A. I have already answered that Question to the Court.

Q. At what Distance do you reckon the *Formidable* was from the *Victory* at the Time the *Fox* came down to her?

A. One Mile aweather of the *Victory*'s Wake, and three Miles astern withal.

Q. About what Time was that, do you reckon?

A. Near Sunset.

Q. Was you in a Situation to hear the Message delivered by the Captain of the *Fox*?

A. No.

Q. Was not the Signal for a Line of Battle ahead kept flying on board the *Formidable* till dark Night?

A. Yes.

Q. Was the Signal (the latter Part of the Day) for Ships to Windward to bear down with many Ships Pendants of the Vice of the Blue's Division

let fly on board the *Formidable* before or after the *Fox* spoke to her?

A. Before the *Fox* cheered the *Formidable*; I did not hear the *Fox* speak to her.

Q. Were not those Signals made in Repetition of those Signals being made on board the *Victory*?

A. Yes.

Q. Had not two of those Ships Pendants been hauled in, because the Ships had answered them before the *Fox* came down?

A. I do not recollect that Circumstance.

Q. Did the *Fox*'s Men cheer the *Formidable* first, or did the *Formidable*'s Men cheer the *Fox* first?

A. The *Fox* first cheered the *Formidable*; and the Expressions I made use of to the Officers and the Men on the Forecastle was, "That's hearty, my Lads, return the Cheer."

Q. Give the Court some Account of the material Damages of the *Formidable* in her Masts, Sails, Yards, and Rigging; the Particulars about the Foremast first?

A. The Foremast very much wounded and rotten; Foretopmast wounded, and Fore-yard, and the Bowspit; the Jib and the Foretopmast Stay-fail cut to Pieces, and went over board; Foretop-fail cut to Pieces; Foresail very much damaged; Fore-stay and Spring-stay shot away; all the Fore-shrouds on the Starboard Side, except one, shot away, and only three remaining on the Larboard Side; all the Foretopmast-shrouds and Back-stays, except one Pair on the Larboard Side; Topgallant-shrouds and Stay, all the Braces, Bowlings, and Running-ropes leading in and about the Foremast, very few excepted; Fore-tacks and Sheets shot away on both Sides.

Q. Is not this a more full and exact Account than could be collected the next Day, when the Account was sent to the Commander in Chief?

A. Yes.

Court asked,

Q. Notwithstanding the Description you have given of the Foremast, Bowspit, and Foretopmast, and the Rigging thereto, did not the *Formidable* wear twice, before any of her Rigging belonging to the Foremast was put into Repair?

A. Yes.

Q. And before the Signal for coming down into the Admiral's Wake was made?

A. I did not observe the Signal for coming down into the Admiral's Wake till I was sent for aft, about Six o'Clock; and what led me to observe that Time was, to be more particular to the Questions the Vice-Admiral put to me. We wore twice with only temporary Ropes to brace the Yards about.

Prosecutor asked,

Q. Do not you conceive any Ship, with all her Masts standing, whilst she has any Canvass abroad, in moderate Weather, will wear by putting the Helm aweather, although her Masts and Rigging may be in such Condition that she cannot carry Sail upon a Wind, to keep Company with other Ships?

A. Yes, we had that Instance in the *Formidable*.

Q. Whether several of these Shrouds that were shot were not cut in two Places?

A. Yes.

Court asked,

Q. You have just mentioned that you had made Use of Yards-tackle-falls for the Purpose of bracing about her Yards, and did brace about those Yards?

A. Yes, we did.

Q. Then is it not your Opinion that you could brace up those Yards?

A. Yes, we did, to follow the Admiral.

Q. Because

Q. Because the last Question was, whether the Ship could not wear without those Ropes; and your Answer was, that your Ship was an Example of it?

A. I believe, previous to that, I had answered, we had made use of temporary Ropes to brace the Yards.

Prosecutor asked,

Q. Mention the particular Damages of the Rigging about her Mainmast?

A. Maintopmast very much wounded; Main-yard and Maintopfail-yard much wounded; Main-spring-stay shot away; seven Main-shrouds of the Starboard Side, and five of the Larboard; Maintopmast-stay and Spring-stay; four Maintopmast-shrouds, and all the Back-stays, Middle-stayfail, Stay, and Toppallant-stayfail-stay.

Q. Mention what Chain-plates were shot away?

A. Fore-channel, three Chain-plates shot away, Main-channel, two Mizzen-channel, one—

He was here stopped by the Prosecutor, supposing it would not be required he should go further.

Court asked,

Q. After you had passed the *French* Fleet, did they bring to, or make Sail?

A. They broke up their Line, and appeared to me to be under Sail, not lying to.

Q. Was your Ship, with those Defects, then in a Condition to have followed those Ships, to renew the Engagement, had the Admiral thought proper to have done it?

A. She was in a State to renew the Action, but not to carry Sail after an Enemy.

Q. The Vice Admiral asked you if there was not some Difference between the Defects you have produced in Court, and those that you delivered in to the Commander in Chief the Day after the Action. How long after the Action was it that the Account of the Defects you now produce was taken?

A. Immediately on her Arrival at *Plymouth*.

Prosecutor asked,

Q. Were not the Officers and Men employed on board the *Formidable* the whole Afternoon and the following Night, in repairing those Damages?

A. Yes?

Q. Did not the *Formidable* get into her Station before Day-light next Morning?

A. She got into the Line, but I cannot answer whether it was her proper Station in the Line.

Q. Did not the Drums beat to Arms at Two o'Clock the next Morning?

A. Yes.

Q. And all Hands at Quarters, and in all Respects ready for Action, expecting immediately to engage at Day-light?

A. Yes.

Q. During the Afternoon of the 27th, notwithstanding the Damages you have mentioned the *Formidable* received, could she not have bore down upon an Enemy, and have engaged, having only two Guns disabled, although she was not able, during the Afternoon, to reach her Station in the Line of Battle, with the Sail the Admiral carried?

A. Yes; such was the Vice-Admiral's Declaration some Time that Afternoon, the particular Time I cannot recollect.

Q. In the Morning of the 28th, do you remember seeing Three *French* Ships to Leeward?

A. I remembe seeing Three strange Sail.

Q. Did you suppose them to be *French* Men of War?

A. I did imagine them to be Three of the remaining Part of the *French* Fleet.

Q. Did you judge them to be Line of Battle Ships?

A. I did.

Q. At what Distance did you judge the nearest of them was from the *British* Fleet?

A. Not more than a Mile from the *Formidable*.

Q. What Number of Men on board the *Formidable* were hurt by an Explosion of Gunpowder?

A. Reported to me twenty-seven.

Q. Were any of them killed outright on the Spot by the Explosion?

A. The Officer who commanded that Deck where the Explosion happened, reported to me, that no Man was killed by it.

Q. What Number of killed and wounded did you report to the Vice-Admiral, after the Engagement, to send to the Commander in Chief?

A. To the best of my Recollection (*referring to a Paper*) fourteen Men killed, one of which was the Boatswain, two since dead of their Wounds, and forty-nine wounded, one of whom was the Second Lieutenant.

Q. Have you made a Comparison of the Number of Killed and Wounded in the respective Divisions, from the Account published by Authority?

A. I did, just at the Time it was first published.

Q. What was the Amount of the Number killed in the Admiral's and Vice of the Red's Division together?

A. I do not recollect immediately the Number killed.

Q. Do you recollect whether it was more or less than in the Vice-Admiral of the Blue's Division only?

A. To the best I can recollect, nearly the same.

Q. And as to the Wounded?

A. The Comparison is nearly the same.

Q. Were those Three strange Ships you have spoke of chased by the *British* Fleet?

A. Not as I observed.

Q. Do you know of any Signal having been made of seeing more strange Ships to Leeward?

A. I do not recollect that Circumstance.

Q. If the *British* Fleet had pursued those Three Ships, and supposing the *French* Fleet to have been in the same Direction as they steered, was there not a Probability of some of our undamaged Ships coming up with those Three Ships, or the disabled Ships of the *French* Fleet, and of taking them, if the *French* Fleet had abandoned them, or if they had staid by them might not another Engagement have been brought on?

A. That being a Matter of Opinion, I wish to decline answering it.

Q. Do you remember what Kind of Weather it was that morning?

A. Moderate Weather.

Court asked,

Q. How many Knots do you imagine a Ship might have gone with all her Sails set?

A. That must depend upon the Class of Ships.

Q. Ships of the Line; the slowest sailing Ships?

A. Between Seven and Nine Knots.

Q. Can you judge what Time the *French* Fleet made Sail?

A. I cannot judge the least in the World.

Q. Do you know of any Signal being made by the *French* Fleet during that Night?

A. Not to my Knowledge.

Q. What Distance was the Port of *Brest* from you in the Morning of the 28th?

A. *Ushant* at Twelve at Noon, N. 81° East Lat. 48° 15', Distance by Reckoning of the *Formidable*, was Forty-five Leagues, but afterwards, by making the Land, we found we were nearer

Q

nearer to it by Thirteen Leagues, as well as I can recollect.

Q. Do you mean the Land of *Ushant*?

A. No, the *Lizard*.

Prosecutor asked,

Q. Being the Middle of Summer, short Nights and moderate Weather, do you apprehend it would have been attended with any immediate and imminent Danger, if the *British* Fleet had pursued that of *France* for the Chance of coming up with some of them, at least so far till we had seen them into Port, or made the Land?

A. It appeared to me to be no imminent Danger.

Q. If you had had an Engagement with a single Ship at that Distance from *Ushant*, and had beat her to occasion her to run away, do not you think that you ought to have pursued her till you had seen her into Port or had made Land, all your own Masts being standing?

A. In a single Ship I should not have hesitated a Moment.

Prosecutor has done with the Witnesses.

Court asked,

Q. In the Course of your Evidence you have said, the chasing Ships appeared to come into Action separately and at a Distance from the Vice-Admiral of the Blue, do you know the Cause why they did so, and could they not get into their Stations in the Line of Battle, after they had left off chasing?

The Witness begs to refresh his Memory by referring to his Evidence on the Minutes of Yesterday, which the Prisoner objecting to, the Court retired, and in Twenty Minutes returned, when the Judge-Advocate read the following Resolution:

"It is agreed, That a Witness, when he comes upon Cross-Examination by the Prisoner or the Court, ought not to be allowed to have Recourse to the Answers he may have given to Questions put to him on his first Examination by the Prosecutor."

Then the Question was repeated.

A. The Reason appeared to me by their chasing by Signal in the Morning; whether they could have got into their Stations in a Line of Battle, after they had left off chasing, I could not be a Judge of.

Court asked,

Q. You have said, Two Ships that were chasing went ahead of the Vice-Admiral of the Blue and joined the Center, did they do it by Signal from the Commander in Chief?

A. Not that I know of.

Q. Did the Vice-Admiral of the Blue make their Signals for coming into their Stations when he saw them go ahead and join the Center?

A. No.

Q. If he had made their Signal to come into their Stations, and they had obeyed it, do not you think that he would have been better supported?

A. I do.

Q. You have said the nearest Ship you could recollect in the Vice-Admiral of the Blue's Division to Leeward of the *Formidable*, meaning the Ocean, and that the Four Ships astern of the *Formidable* before the Action began, were at a Distance from each other, Half a Mile asunder, and that the Damage the *Formidable* received was greater than if she had fought with the Body of the Vice-Admiral of the Blue's Division; do you not think, if the Vice-Admiral of the Blue had made the Signal for the Four Ships astern to close the Line, and come nearer to each other, and

nearer to him, agreeable to the Seventh Article of Admiral *Keppel's* Fighting Instructions, they would not have supported him, and have taken off a great Deal of the Fire of the Enemy?

A. In the first Place, I do not recollect what the Signal in the Seventh Article is.

The Article was shewn to him.

It appeared to me, that if the Signal had been made for the Ships alluded to astern, for those Ships to have closed the Vice-Admiral of the Blue, they could not have done it with more Expedition than they did, as they seemed to have all their Sails set necessary to close in the Action.

Q. What is meant is, while they were engaging, all the Rear of your Division coming along the *French* Fleet?

A. After the *Formidable* had begun the Action, I can answer nothing relative to those Ships astern, except one; that passed under our Lee, when we were going down the *French* Line.

Q. Was the Van of the Vice Admiral of the Blue's Division ahead of you, and near to him, to support him in Time of Action?

A. I do not apprehend the Question, "*The Vice-Admiral of the Blue's Division*," because the Fleet were not in a Line.

Q. Was any of the Vice-Admiral of the Blue's Division that should have been ahead of him, supporting them in the Situation that they were; were they on his Lee-bow, weather-bow, or right ahead?

A. I can only answer to Two Ships that passed the *Formidable*, before she began the Action.

Q. What Ship did you follow in the Action?

A. I cannot recollect.

Q. How near was the nearest Ship to you ahead of the *Formidable*, just before you came into Action?

A. A good Half Mile.

Q. Do you know whether she was one of your Division?

A. I do not.

Q. Did you, on the 27th July, see any Action in Admiral *Keppel* that indicated a Flight from the Enemy; or did you see the *French* Fleet pursue the *British* Fleet and offer it Battle?

A. The *British* Fleet stood upon the Starboard Tack, forming the Line. The Enemy forming astern on the same Tack: Whether that has the Appearance of a Flight, I submit to the better Opinion of the Court.

Q. Admiral *Keppel* is charged with negligently performing the Duty imposed on him.—Acquaint the Court if you know of any Instance on the 27th July, in which he was Guilty of such Neglect; or did not perform the Duty imposed on him?

A. I do not hold myself a competent Judge of the Behaviour or Conduct of an Admiral, in so high a Department or Command as the Honourable Admiral had.—I stand here as an Evidence, to answer such Questions as may be proposed to me, and not as a Judge.

Q. You are not asked as a Judge, it is a fair and honest Question—there is no other Meaning in it.—It is not asking your Opinion, but asking from your Knowledge?

A. I wish to decline giving an Answer to the Question. I do not think it would be right in me, who am so young an Officer, to answer such a Question as that.

Q. Did Admiral *Keppel*, as far as came within your Observation, by his Conduct on the 27th, or 28th July, tarnish the Honour of the *British* Flag?

A. I

A. I must also beg Leave to decline answering that Question, for the Reasons offered in Answer to the previous Question.

Q. You have said, the *French* Fleet seemed to intend, in your Opinion, to have renewed the Action. What was your Reason for so thinking?

A. The *French* Fleet forming in a Line to Leeward of the *British* Fleet.

Q. When they were forming a Line on the Starboard Tack, if they had been inclined to renew the Action, could they not have fetched within Pistol-shot of the *British* Fleet, and engaged if they had pleased?

A. They could have fetched within Pistol-shot, if they had pleased.

Q. You say, you expressed your Opinion, that you judged the Commander in Chief did not intend to renew the Action that Afternoon with the Enemy, after hauling down the Signal for Battle. What was your Reason for so judging?

A. Standing from them, and carrying Sail so much, that we could not keep or preserve our Distance.

Q. Did you from the *Formidable* make any Signal that you could not keep up with the Admiral?

A. No.

Q. If you had made such Signal, Do you not think the Commander in Chief would have shortened Sail?

A. It appeared to me, the State of the *Formidable* was so apparent, that there was no Necessity for making such Signal.

Q. Is it the Commander in Chief's Business to look out to other Ships, or they to look out to him?

A. The Junior Officers to look out for their Seniors.

Q. Was not the Signal on Board the Commander in Chief for the Line of Battle, while the *Victory* was standing towards the Enemy?

A. I neither saw it, nor heard of it, till she passed us.

Q. Why did not the *Formidable* fire at the *French* ships, which you said were so near you the 28th in the Morning, which would have shewed the Admiral they were so near you as One Mile?

A. I beg Leave to refer that to the Vice-Admiral of the Blue.

Q. Did you receive any Order to do it?

A. No.

Q. Was the *Formidable* at any Time of the Day of the 27th, in such a Condition as not to be manageable?

A. No.

Prisoner asked,

Q. Captain Bazeley has upon some Questions refused giving Opinions: In Answer to other Questions, he has given Opinion. That does not quite correspond; however, I shall ask him now, in order to form an Opinion from the Opinion he has given the Court, why the Admiral did not intend to renew the Battle from the Sail he carried. What Sail did the Admiral carry as he stood to the Southward, in the Afternoon of the 27th July?

A. I cannot recollect the particular Canvas she had set; my Reason for so saying was, the *Victory's* fore-reaching upon the *Formidable*.

Q. Were the *Victory's* Topgallantails set?

A. I do not recollect they were.

Q. Was her Main-tack on board?

A. I did not see her Main-sail set.

Q. Were all the Reefs out of her Top-sails?

A. That I cannot answer to.

Q. Were her Jib and Stay-sail set.

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A. From the Situation that the *Formidable* was in aftern of the *Victory*, it is impossible for me to say whether the Jib, or what Stay-sails were set.

Q. Then inform the Court how you know that the *Victory* had much Sail set?

A. What I mean to understand, or to explain by "much Sail being set," is at the Time the disabled State the *Formidable* was in; and what I have related to the Court with respect to her Situation, the *Victory* being at that Time, to the best of my Recollection, under her Top-sails and Fore-sail.

Q. Did not that Sail suffer the *French* leading Ship to range up abreast under her Top-sails going parallel to the *Victory*?

A. To the best of my Recollection the Van of the Enemy's Fleet appeared to be abreast of the *Victory* about Dark. I speak of the First, Second, or Third Ships, which appeared to have only their Top-sails set.

Q. At what Time do you mean to state that the Vice-Admiral of the Red should have been called to have formed in a Line on the Larboard Tack?

A. I do not pretend to judge, but the Article which the Vice-Admiral of the Blue alluded to in his Question, appeared to me to be very applicable for the *British* Fleet to form in that Position, which the Thirty-first Article in the Fighting Instructions directs.

Q. Do you understand the whole Meaning of the Article?

A. I have read it frequently, and I think I do.

Q. Was any Part of the *British* Fleet leading with a large Wind?

A. None that I saw.

The Article was read by the Judge-Advocate.

Q. Do you take upon you to say, that the Vice-Admiral of the Red was not called down by Message?

A. I do not know.

Q. Do you know how many Ships the Vice-Admiral of the Red had with him at this Time?

A. To the best of my Recollection with himself Nine.

Q. That is the whole of his Division, one excepted, was it not?

A. Yes.

Q. You are sure of Nine?

A. To the best of my Recollection they were Nine.

Q. Was the Vice-Admiral of the Red at this Time, or the Admiral of the Fleet nearest to you?

A. I beg to know what Time.

Q. The exact Time when you saw the Vice-Admiral of the Red with Nine Sail, and made the Thirty-first Article applicable to the Motions of the Fleet in your Opinion.

A. If you want to draw me into Opinion, I will answer it positively. Immediately as the *Formidable* past the Enemy's Rear, it struck me in that Position, and I counted the Ships to the best of my Recollection. The Vice-Admiral of the Red with the Ships with him appeared to me a Mile aweather of the *Formidable*, and the *Victory* at that Time Two Miles Distance when we passed the Enemy's Rear.

Q. Was it at this Time that you thought the *Formidable* might be cut off by the *French* Rear?

A. No; not after we passed them.

Q. When was it then?

A. Before we opened our Fire there appeared to me a great Probability the *French* Admiral would have made the Attack.

Q. Do

Q. Do you know the Condition of the Center and those Ships of the Vice-Admiral of the Red's Division that came out of Action before the Vice-Admiral of the Blue came out of Action?

A. I know the State of no other Ship but the Ship I commanded on the Day of Battle.

Q. Then do you feel yourself justified as an Officer in swearing, that the Action might have been renewed if the Admiral had wore as near to the Rear of the Enemy as the *Formidable* did, and doubled upon the Enemy with the rest of the Ships, at the same Time that you confess yourself ignorant of the Condition of every Ship in the Fleet but your own?

A. I have said if the Vice-Admiral of the Red and his Division had bore down, and if the Admiral had advanced with his Division to have renewed the Engagement, it would have obstructed the Enemy from forming a Line so immediately.

Q. That does not answer the Question?

A. That is the Answer I wish to give it.

Q. Do you take upon you now, uninformed of the State of any Ship but your own, to say that the Admiral had a sufficient Number of Ships with him formed in a Line on the Larboard Tack and near enough to support him, so as to have prevented the *French* Fleet forming their Line on the Starboard Tack?

A. I do not recollect the Admiral being on the Larboard Tack in a Line with Ships with him.

Q. When the *Formidable* passed the *Victory* while the Admiral was advancing toward the Enemy on the Larboard Tack after the Action, were there any Ships ahead of the *Victory* on the same Tack?

A. I do not recollect Ship or Ships to be ahead of her.

Q. At what Time did you see the Vice-Admiral of the Red formed in the Rear of the *English* Fleet whilst on the Starboard Tack in the Afternoon of the 27th?

A. I cannot speak to Time.

Q. Not within Half an Hour, or an Hour?

A. No; there are only two particular Circumstances in that Afternoon by which I can recollect the Time when something material happened in the Ship.

Q. Then you do not recollect the Time when the Vice-Admiral of the Red quitted his Station in the Rear, in forming the Line ahead?

A. I do not.

Q. You saw the Vice-Admiral of the Red in the

Rear of the *Victory*, can you inform the Court of the Situation of the *French* Fleet at the Time that you did see the Vice-Admiral of the Red in the *Victory's* Wake?

A. To the best of my Recollection, forming their Line astern of the *Formidable*, and to Leeward withal.

Q. What was the Situation of the Vice-Admiral of the Blue at this Time, with respect to the *Victory*, and to the Vice-Admiral of the Red?

A. To the best of my Recollection, the Vice-Admiral of the Red was formed rather before the Leebeam of the *Formidable*, and astern of the *Victory*.

Q. What Course from the Wind must the *Formidable* have steered to have come into the Admiral's Wake in her Station?

A. That must depend upon particular Circumstances, how far the *Formidable* might be aweather on the Admiral's Wake, and at what Rate she failed.

Q. You have placed the Vice-Admiral of the Red a little before your Leebeam—Suppose the *Victory* at that Time, with the Wind we had, went Two Knots and Three Fathoms, what then would have been the Course necessary to have steered to have got into her Wake from the Situation she was in.

A. Half a Point, or between that and a Point, which would have increased our Distance by falling astern.

Q. Could you not have gone faster?

A. Not faster than we did.

Q. Did you ever set the *Victory* by Compass?

A. I never did that Afternoon by Compass.

Q. Were there any Minutes kept on board the *Formidable* of Signals, or of the Bearings of the Admiral, or of any Thing about him?

A. Nothing about the Bearings; but there were Minutes taken of Signals, and very incorrect ones, which I am ready to explain.

Q. Who took them?

A. Two Midshipmen who were appointed for that Business.

Q. What are their Names?

A. *Geron* and *Hoggart*.

Q. Do you know where those Minutes are?

A. I never saw them after the Battle.

Q. If you never saw them since, how do you know they are incorrect?

A. From the Master's Report to me, who wrote the Log from them.

Adjourned, being Four o'Clock, till To-morrow at Ten o'Clock.

FOURTEENTH DAY.

FRIDAY, the 22d of JANUARY, 1779.

COURT met according to Adjournment. Prisoner brought in, and Audience admitted.

Captain Bazeley again called in.

Prisoner asked,

Q. By whose Nomination were the two Midshipmen appointed to observe Signals, and take Minutes?

A. By the Vice-Admiral's Nomination, with

the Assistance of one the Vice-Admiral appointed as his Aid-du-Camp, Mr. *Montagu*.

Q. Had not the Midshipmen who were appointed to take Minutes of Signals the best Opportunity of observing them correctly?

A. That I cannot answer to.

Q. Did they acknowledge at any Time, and when, that their Minutes of the Signals were erroneous?

A. They never did to me, nor I to them.

Q. Was it the Master who took upon him to enter the Signals in the Log-book, different from the

the Minutes of those who were appointed to observe them?

A. I do not know that the Signals in the Log-book differed from the Minutes taken by the Midshipmen—but I observed there was very little Mention of Signals in the Log-book.

Court.

Explain yourself as to the Incorrectness of the Minutes?

A. Meaning an Omission, in their not being entered full; but no Erasurements or Alterations in the Log-book.

Q. Then what was the Addition made to them?

A. There was none made.

Prisoner asked,

Q. Can you take upon you to say, that the Minutes and Log-book differed or agreed as to Signals?

A. I cannot say.

Q. Do you know where those Minutes are?

A. Since leaving the Court Yesterday, I have enquired of the Master and the different Officers of the *Formidable*, if they knew any Thing of the Minutes of the Signals taken before the Day of the Battle, and after, to the Arrival of the Ship at *Plymouth*, and I am informed, that Mr. *Parry*, late Midshipman of the *Formidable*, now Lieutenant of the *Triumph* at *Chatham*, had taken those Minutes with him out of the Ship, which I never knew or heard of till this Morning.

Q. Were you told when they were delivered to Mr. *Parry*?

A. Yes.

Q. When?

A. When Mr. *Parry* was appointed to observe Signals in the Room of Mr. *Geron* and *Hoggart*, who were appointed to the Duty of Mates of the Ship.

Q. Are all the Gentlemen who took the Minutes attending?

A. They are; and the Minutes, if they are in being, are sent for.

Q. In the Morning of the 27th of July, how far was the Vice-Admiral of the Blue to Leeward of the *Victory*, when the Signal was made for Ships to chace?

A. About Half a Mile of the *Victory's* Lee Bow, and not quite a Mile ahead withal, to the best of my Judgment and Recollection.

Q. Do you recollect what Sail the *Formidable* was under?

A. I beg Leave to ask, what Hour the Admiral means?

Q. At Day-light in the Morning.

A. Close-reefed Topsails, the Fore and Main-topmast Stay-sails, and the Fore Course.

Q. At the Time the Signal was made to chace to Windward?

A. Upon the Signal being made to chace to Windward, the Main-sail was set, and two Reefs let out of the Topsails.

Q. You have said the Vice-Admiral of the Blue and his Division were in a proper Situation, and at a proper Distance, to have readily taken their Station in the Line of Battle on the Larboard Tack, had a Signal been made for that Purpose—Could the *Formidable* and the rest of the Division have got right ahead of the *Victory*, without making aboard, or the *Victory* bearing down to Leeward of them?

A. I apprehend the *Formidable* could not have got right ahead of the *Victory*, without making aboard, for the Line to have been completely formed, in her Situation, without the Admiral had edged away for the Purpose.

Q. Was not the Vice-Admiral of the Red and

his Division considerably to Windward of the *Victory*?

A. To the best of my Recollection, upon the Weather-quarter, and astern withal of the *Victory*—three Miles Distance from the *Formidable*, to the best of my Judgment.

Q. Must they not have bore down likewise as far to Leeward of the Vice-Admiral of the Blue, and thereby have increased the Distance of the whole Fleet from the Enemy?

A. Yes.

Q. When the Signal was made for the whole Fleet to tack together about Ten o'Clock that Morning, did the *Formidable* tack directly when the Admiral did?

A. I think she did.

Q. You are not sure?

A. I think she did, to the best I can charge my Memory.

Q. At what Hour did the *Formidable* back her Mizentop-sail, when drawing near to the Enemy?

A. I cannot answer particularly to Time.

Q. You have said the Mizentop-sail was backed, to prevent the *Formidable* getting into the Ocean's Line of Fire—How long did it continue aback?

A. Till she had passed the French Line.

Q. Were the Ships ahead of you, when the Mizentop-sail was aback, joined to the Center, so as for some of them to be obliged to go to Leeward out of the Line, on account of some of the Ships coming up astern pressing upon them—meaning ahead and astern of the *Formidable*?

A. To the Ships ahead I cannot speak—only to one Ship that passed under the *Formidable's* Lee while engaged, or at least running down the French Line.

Q. Do you know the Ship that bore away under the *Formidable's* Lee?

A. I do not.

Q. Do you know what Ship was next ahead of the *Formidable*?

A. During the Action?

Q. Yes.

A. No.

Q. Did not you back your Mizentop-sail for the Ocean?

A. Yes, and as well for the Ships astern to close.

Q. How many of the French Ships did you pass astern of the French Admiral after you began to engage—I mean the Admiral with the Flag at the Maintopmast-head in the Hundred Gun Ship?

A. I did not count the Ships at all while we were running down the French Line.

Q. Where was you at that Time?

A. The Fore-part of the Quarter-deck, the Starboard Side, most Part of the Action.

Q. Looking at the Enemy?

A. Yes, as we passed along the Line.

Q. How many Three-deck Ships had the French?

A. There appeared to me Two.

Q. Were they tolerably near together?

A. That I cannot answer to.

Q. Inform the Court how many French Admirals were tolerably close to each other?

A. I cannot.

Q. Was the Irregularity of the French Line the Cause of the Irregularity of the Distance at which you said the *Formidable* engaged different Ships as she passed along the Line, or did the *Formidable* bear away?

A. The *Formidable* did at one Time during the Action, going down, bear up a little to avoid being on Board one of the Enemy's Ships, whose Jib-boom nearly brushed the Weather-leach of

the *Formidable's* Maintopfail, and I thought we could not avoid being on Board.

Q. When that Ship was so near, did she give a warm Fire into the *Formidable*?

A. No, she appeared to be silent before we reached her?

Q. Was not the *Formidable* and the Ships astern succoured and supported by the Ships that engaged those *French* Ships before she came that Length?

A. They certainly received less of the Enemy's Fire in consequence of the Center and Red Divisions passing before along the *French* Line.

Q. As you have said the *Formidable* wore after passing the Rear of the *French* Ships, and seeing the Admiral advancing towards the Enemy on the Larboard Tack, and that the Officers and Men on Board the *Formidable* were ordered to Quarters, expecting to renew the Battle when the Admiral came up, inform the Court whether the *Formidable* did not wear again without Signal, and pass astern of the Admiral, whilst his Head was towards the Enemy?

A. Yes.

Q. When you passed the *Victory*, was the Signal for the Line of Battle then flying?

A. I believe it was.

Q. When the Vice-Admiral of the Red and his Division made sail to get into his Station, after being in the Rear of the Admiral, on the Starboard Tack, did he not pass between the *Formidable* and the Center Division?

A. I do not recollect.

Q. You think you saw the Signal for the Line of Battle on Board the *Victory* as you passed her, can you say it was ever hauled down?

A. I cannot charge my Memory.

Q. Do not you know when the Signal for the Line of Battle was hoisted on Board the *Formidable*?

A. I do not.

Q. Are you positive it was flying at Five o'Clock in the Afternoon on Board the *Formidable*?

A. I think it was, but I cannot speak positively to that.

Q. How do you know the Time the *Fox* came to the *Formidable*, having before said you never observed Time?

A. I judged it to be near Sun-set.

Q. What was the Confusion you spoke of on Board the *Formidable*?

A. Nothing more than what is natural to happen to a Ship coming immediately out of Battle.

Q. At what Time do you mean the Confusion happened?

A. Confusion and Hurry the whole Afternoon, to get the Ship in a proper State to obey the Admiral's Signal.

Q. When you beat to Arms at Two o'Clock in the Morning of the 28th, was it upon the Approach of any Ship to Leeward of you?

A. No.

Q. Where was the *Formidable* at Two o'Clock in the Morning, in respect to the Admiral?

A. Astern and to Windward withal.

Q. Did you see the Admiral's Lights during the Night?

A. Yes, most of the Night, at different Times, that I was looking for them.

Q. Were the distinguishing Lights of the *Formidable* burning at that Time?

A. No, they were not.

Q. Were there any Ships between the *Formidable* and the *French* Ships you saw in the Morning?

A. I saw none of the *British* Ships between.

Prisoner had done with the Witness.

Court asked,

Q. You say the *Fox* cheered the *Formidable* first, and that you were upon the Fore-castle; can you take upon you to say there was no Cheer from the Poop, or the Quarter-deck, at the Time the Captain of the *Fox* delivered the Message from the Admiral to the Vice-Admiral?

A. None that I heard or knew of.

A former Question and Answer, [page 58. line 15. col. 1.] were read.—The following Question from the Court was then put.

Q. Now if the *Formidable* had been that Ship, and in the Condition you have reported her when the supposed Ship run away, would you have ventured to have pursued her on a Lee Shore?

A. In the Condition the *Formidable* was on the Morning of the 28th, I should not have thought my Conduct justifiable if I had not in a single Ship.

Q. The Question goes to the Time of her going out of Action?

A. Knowing myself upon a Lee-Shore, it must depend chiefly what Coast I was going upon. I suppose a Lee-Shore to be in Sight of Land, and in such a Situation, I should not, in the Condition she was on the 27th, but in the Condition she was on the 28th I should.

The Court, in looking over the Formidable's Log-Book took Notice, that Three Leaves were cut out from the 26th to 28th July inclusive.

Q. Can you inform the Court how these three Leaves came to be cut out of this Book?

A. I do not know, so help me God! I hold a Ship's Log-book sacred—and from what has been said with respect to the *Robust*, I wish to be particular in saying, that I do not know any thing of it—I am happy in being here to answer the Question. In Fact, the Log-book before you is the common Book kept in the Ship, and would have been destroyed; but when the Log-book was called for, I said, that which is the rough Book in its original State should be produced; this is the Book, and has been kicked about in the Orlop.

Withdrew.

Sir Richard Bickerton, Captain of the *Terrible*, sworn.

Prosecutor asked,

Q. At what Hour did you first see the *French* Fleet the 27th in the Morning?

A. At Five o'Clock.

Q. Did they appear to you at any Time that Forenoon in a Line of Battle?

A. They did.

Q. At what Time had they that Appearance to you?

A. Soon after I tacked.

Court asked,

Q. At what Time did you tack?

A. A little before Ten. When I came to range along them, they were not in that regular Line I saw them in at first.

Q. What occasioned your tacking?

A. Agreeable to Signal to chase to Windward.

Prosecutor asked,

Q. Do you remember the Signal made for some Ships of the Vice-Admiral of the Blue's Division to chase to Windward?

A. I do.

Q. Do you remember the Time?

A. About Six o'Clock, some of them.

Q. For

Q. For how many Ships of the Vice-Admiral of the Blue's Division?

A. I think there were Four—but I am not certain.

Q. Do you remember whether there were not more than Four Ships chasing when that Signal was thrown out?

A. I did not chase then.

Q. Was your Signal one of those that were thrown out?

A. Not the first.

Court asked,

Q. Do you know the Names of those Four Ships?

A. Two of them I do.

Q. Name them.

A. The *Egmont* and *Robust*.

Prosecutor asked,

Q. You recollect your Ship's Signal was made after the Four—Do you remember that there was a Sixth Signal after that made for the *Terrible*—which made the Six?

A. I believe it was the *Worcester's*.

Q. Did the Signal for those Ships chasing cause that Part of the Fleet to be dispersed and separated from their Flag, and from each other?

A. It certainly occasioned them to separate.

Q. In the Morning of the 27th July, was the Vice-Admiral of the Blue with his Division ahead of the Admiral—some of them somewhat upon her Lee Bow, and others somewhat to Windward—or how otherwise situated?

A. I think the Vice-Admiral of the Blue was to Leeward of the Admiral, and a little before his Lee-beam—the *Terrible* upon the Vice-Admiral of the Blue's Larboard-bow.

Court asked,

Q. Was that Signal, which was made for the Six Ships to chase to Windward, a Means of their coming to Action—or did it prevent their coming to Action so soon as they otherwise would have done?

A. It was a Means of their fetching further to Windward, and engaging more of the Enemy.

Prosecutor asked,

Q. Was there any Signal made for the whole Division to chase?

A. I did not see it.

Q. When Ships chase from different Situations, and who differ in their Rates of Sailing, can they all come into a Situation at one and the same Time proper for tacking?

A. I should think not.

Q. Was it not the Admiral's Practice to make the Signal for Ships chasing to tack when he judged they ought to do so?

A. I do not remember it often made that Cruize.

Q. Did the Admiral make such Signal that Morning for particular Ships?

A. I did not see it.

Court asked,

Q. Did you tack.

A. I did.

Q. Then you did it according to your own Judgment?

A. I certainly tacked according to my own Judgment.

Prosecutor asked,

Q. Do you mean to say, you tacked before you observed the general Signal for the Fleet to tack together?

A. We tacked a little before.

Q. If those Six Ships had not been taken from the Vice-Admiral, might not the whole of that Division have gone into Action together with their

Admiral in a connected Body, to have supported each other at the Time the Vice-Admiral himself did?

A. We certainly should have been more connected had we not chased.

Court asked,

Q. Were you close upon a Wind when you first attacked the Enemy?

A. Close upon a Wind to the first Ship, but afterwards were obliged to keep away.

Q. When the Signal was thrown out to chase, were you to Leeward or to Windward of the Vice-Admiral of the Blue?

A. I think, as I observed before, we were upon his Larboard-bow in our Station.

Prosecutor asked,

Q. Do you think that Ships, while proceeding along an Enemy's Line scattered and dispersed from each other, are exposed to more or less Damage from the Enemy,—than if a Number of Ships proceed connected together, so as to give Support to each other?

A. I think the more Ships are together, the less Damage each must receive.

Q. Did not the chasing Ships, so far as you know, come into Action separately, without being near enough to support each other?

A. There were Three astern of me, that appeared to be pretty near together.

Q. Do you remember the Time when the *Terrible* in the Thick of the Smoke, from the *Formidable* and *Terrible*, run close to the *Formidable's* Stern?

A. I remember the *Formidable* coming across me, when I was engaging the Ship ahead of the *Bretagne*.

Q. Till the Time that I am speaking of, was any other of our Ships so near the *Terrible* as to afford Support to each other?

A. I believe not.

Q. Do you know if any Part of the chasing Ships of the Blue's Division passed ahead of the Vice-Admiral, and joined the Center Division?

A. I do not.

Q. At the Time you speak of, when you were near the *Formidable*, did you shoot ahead of her, or remain astern?

A. I remained astern for some Time, but was afterwards obliged to bear up, to prevent being on Board the *Formidable*.

Court asked,

Q. Was the *Formidable's* Mizentop sail aback at this Time?

A. I do not know it was aback at that Time, but I saw it aback.

Q. Did you see it aback before you shot ahead or to Leeward of her, to avoid being on Board her?

A. I really do not know, it was in the Heat of the Action that I could not take Notice.

Q. Were there any Ships near you astern at that Time?

A. I did not observe any, there was One to Leeward near us.

Prosecutor asked,

Q. In proceeding along the *French* Line, did our Ships go large?

A. They went from the Wind.

Q. When you shot to Leeward of the *Formidable*, how many Ships of the Vice-Admiral of the Blue's Division then remained astern of him?

A. I know of none, but the Three which were chasing.

Q. Were they close up with him?

A. I did not take Notice.

Q. After running to Leeward to avoid being on

on Board the *Formidable*, did you shoot ahead of her?

A. Yes, upon her Larboard-bow.

Q. Did you find any other Ship there, or near to her?

A. The *America* was very near to me.

Q. Did you and the *America* go on ahead together?

A. I know nothing of the *America*, the Smoke was so thick, I kept on myself, but did not go far ahead.

Q. When you passed ahead to Leeward of the *Formidable*, was the *America* then on your Weather or Lee-bow?

A. Upon the Lee-bow, I think.

Q. When you proceeded along the Enemy's Line which was not perfect, was it other than might be expected from having been engaged with the Number of Ships which had passed before?

A. I really do not know.

Q. How far do you think the *British* Fleet was extended from Van to Rear at the Beginning of the Engagement, after the Ships had chased?

A. The Admiral and Vice-Admiral of the Red appeared very well together.—The chasing Ships might be about Seven or Eight Miles Distance.

Q. From what?

A. The Admiral.

Q. With what Part of the *French* Line did you begin to engage?

A. The Third Ship.

Q. By your Description of the Van and Center Division, being pretty well connected together, were not the Admirals of those Divisions well supported with the whole Force of their respective Division?

A. In the great Distance I was from them, I should think they were.

Q. By the Description you have given of the Separation of the Vice Admiral of the Blue's Division, did he go into Action equally well supported with the rest of the Flag Officers?

A. I believe not.

Q. Or was he so during the whole, or any Part of the Time he was in Action?

A. It is not in my Power to answer that.

Q. When you had passed the Rear of the Enemy's Fleet, did you observe where the Admiral, with the Center Division was, and where the Vice Admiral of the Red with his Division was?

A. They were ahead of the *Formidable*.

Q. Which Way were they standing?

A. Towards the Enemy.

Q. At what Distance were they?

A. I cannot say.

Q. Was the Admiral, with the Ships with him that had passed the Rear of the *French* Fleet so near to the Enemy as to be ready immediately to renew the Fight, when the Vice of the Blue came out of it, or to countenance and support him, whilst he remained engaged with the few Ships with him, after the Admiral had passed the Whole?

A. My Ship having just come out of Action, and been greatly disabled, I was anxious to get her into Order to renew the Attack; and therefore I took little Notice of any Thing else at that Time.

Q. From the very brisk Fire kept up by our Ships that got into the Engagement, do you not think that the *French* Ships must have suffered in Proportion to ours?

A. Some of them appeared to be disabled, and some of them did not.

Court asked,

Q. Recollect, and give an Account of the ma-

terial Damages your Ship suffered in her Masts, Yards, Sails, and Rigging?

A. The Foreyard was shot half through, about Fifteen or Sixteen Feet from the Larboard Yard-arm; the Mainmast had Two Shot lodged in it, One about Ten Feet below the Hounds, and One about Seven or Eight Feet above the Quarter-deck—The Maintopmast had a large Shot through it, about Eleven Feet below the Hounds—The Mizzenmast a large Shot, which carried away about a Third of it, Ten Feet above the Poop—The Mizzenyard about Twelve or Fourteen Feet from the Parrel much wounded—The Rigging, in general, was very much cut—Maintopfail and Forefail were cut to Pieces—The other Sails damaged.

Court asked,

Q. You just now said the *French* Fleet were some of them disabled—Were the *English* Ships, which had been engaged, in a Condition to renew the Attack at the Time the Vice-Admiral of the Blue speaks of, which was immediately after he came out of it?

A. From what appeared to me, I do not think they were.

Q. Was your Ship in a Condition?

A. She was not.

Prosecutor asked,

Q. Suppose you had been engaged alongside of a Ship upon the same Tack, not passing on contrary Tacks, was not your Ship in a Condition to have continued Action with any Ship that might have been alongside of you in that Station?

A. I certainly should have continued Action as long as I could.

Q. Was your Ship in that Condition as to oblige you to quit the Ship you might have been so engaged with?

A. No, I certainly should not have quitted the Ship, while I had Steerage Way, or had the least command of my Ship.

Court asked,

Q. You have described the Vice-Admiral of the Blue to be to Leeward of the Admiral in the Morning of the 27th—If the Admiral had then bore down in the Vice-Admiral's Wake to form the Line, as the Wind then was, do you think the Enemy could probably have been brought to Action on that Day?

A. That must depend entirely upon the Enemy; but I believe, that if the Admiral had bore down, we should not have brought them into Action, as they always avoided coming to Action.

Q. Did you not come into Action so soon, although you chased, as you would have done, provided the Admiral had made the Signal for the Line of Battle, and you had not chased.

A. I believe sooner.

Prosecutor asked,

Q. Do you remember with what Part of the *French* Fleet the *Formidable* began Action, was it ahead or astern of the *French* Admiral?

A. I never saw the *Formidable* in Action till she had begun with the *Bretagne*; she might have fired into the Ships ahead of the *Bretagne*, but reserved her Fire for the *Bretagne*.

Q. Where did the *Victory*, do you understand, begin Action?

A. I really cannot tell.

Q. If the *Formidable* did begin Action with the Ship next ahead, or the Second Ship next ahead of the *French* Admiral—suppose the *Victory* had been in a Line ahead of her, might not they have begun the Action successively in the same Place?

A. If the *Victory* had been there, there is no Doubt but she would have engaged where the *Formidable* did.

Court

Court asked,

Q. In the Situation you was, could you be a Judge at the Distance you was from the Center and the Van, whether they were properly supported or not, and how they engaged, or with what Ships?

A. It was impossible.

Prosecutor asked,

Q. If the *Victory* did not begin close Action so far ahead of the *French* Admiral as the *Formidable* did, would she not have been in a more advantageous Situation for attacking the Enemy if she had been in a Line with the *Formidable*?

A. I observed before, if the *Victory* had been there, she would have engaged as the *Formidable* did.

Q. I would ask you, as an old Officer, and one that knows the Service well, whether you understand that a Flag Officer of a Division has a Right to call Ships in from chasing, after the Commander in Chief had sent them out to chase by Signal, without the Commander in Chief first makes the Signal for calling them in?

A. I have never seen that done without the Signal from the Commander in Chief.

Q. In your Opinion, from the Discipline of the Service, has a Flag Officer of a Division a Right to do so?

A. I do not know—I have never seen it done.

Court asked,

Q. In the Situation the *French* Fleet were then, and the Wind coming so far favourable as to admit the *British* Fleet to bring them to Action, do you, although your Signal had been made to chase, and no Object in View but the *French* Fleet, or do you not think, as an Officer, it was your Duty to return to the *British* Fleet, and get into your Station as soon as possible?

A. I do think I did my Duty by tacking when I did.—I got into Action as soon as possible.—When my Signal was made to chase to Windward, Four Ships were ordered to chase before me; I then mentioned to my Officer, this is meant to bring the Enemy to Action at all Events, therefore I shall carry a Press of Sail, which I did.—A little before Ten we tacked, at the same Time the Wind shifting Two Points, we brought the headmost Ship of the Enemy's Van very near ahead.—The Admiral about Half past Eleven began the Action, the Enemy had passed him, therefore I thought it was best for me to take the Line where he had left it, and begin to engage as soon as possible, when the Signal for Battle was thrown out.

Prosecutor asked,

Q. Whether you thought it your Duty to go into Action as soon as you could, in Preference to any Thing else under that Signal, and whether you did so?

A. I have observed before, I thought it my Duty to go into Action.

Q. Do you think the Vice Admiral of the Blue was authorised to call the chasing Ships in on the 27th July, on pretence of taking their Stations in the Line, the Commander in Chief having made no Signal for the Line?

A. I cannot say.

Q. After you had passed the Rear of the Enemy's Line, did you take Notice of the *Formidable*?

A. No.

Q. When you first saw her afterwards, was it while she remained engaged, or after she came out of the Engagement?

A. I took Notice of the *Formidable* when we bore up to get clear of her, and got upon her Larboard-bow.

Q. The Time meant is, after you came out of Action?

A. I did not then take any Notice of her.

Q. Do you remember when you first took Notice of her after you came out of the Action, she being the Flag of your Division?

A. About Three o'Clock in the Afternoon I think, I cannot be certain.

Q. You have said you took Notice of the Admiral as soon as you came out of Action, but was not able to mention the Distance you was at; do you remember at that Time when you saw the Admiral whether the Signal for Battle was hauled down, or flying?

A. I do not.

Q. Where was the Vice-Admiral of the Blue when you first saw him at Three o'Clock with respect to the rest of the Fleet?

A. I really cannot tell.

Q. At what Time do you recollect seeing him when you can give an Account of his Situation?

A. After I wore, I think I went to Windward of the Vice Admiral of the Blue, and got into my Station.

Q. I think you have said when you first saw the Admiral, he was standing towards the Enemy?

A. Yes.

Q. Did you see him wear again, and stand to the Southward?

A. I did not.

The Witness observed that in giving an Account of the Ship's Damages, he had omitted to mention that she had Five Shot between Wind and Water, by which she made a deal of Water, and it occasioned her to remain longer upon that Tack, and it was for that Reason he could not see the Admiral.

Q. Do you mean to say, you continued to lay upon the Starboard Tack?

A. Yes, for a little Time.

Q. Whilst you continued on the Starboard Tack, did you see the Admiral?

A. Yes, I did: I passed him.

Q. Did you pass to Windward or to Leeward of him?

A. To Leeward, I think—I believe I cheered him.

Q. Where was the Vice-Admiral of the Red with the Ships of his Division, at the Time all firing ceased?

A. I believe a little to Windward of the Admiral on his Bow, but I am not certain.

Q. Did you observe when the *French* began to break up their Line of Battle, and stand to the Southward?

A. I did not.

Q. When did you first observe that any Part of them were standing to the Southward?

A. A little before I wore.

Q. Was it the Vice-Admiral of the Blue and Part of his Division that last came out of Action, and what Ships;—or what other Ships, if it was not them?

A. They were the last:—The *Terrible*, and *America*, I believe; and the *Elizabeth*, *Robust*, and *Worcester*; I cannot speak to any other.

Q. Whilst you was standing with your Head to the Southward, was the *French* Fleet astern?

A. We lay to; we did not stand to the Southward, and I think the *French* Fleet were astern of us, but am not certain whether we were coming to or falling off.

Q. Did the Admiral with the rest of the Fleet stand to the Southward all the rest of the Afternoon till Night?

A. They had their Heads to the Southward.

S

Q. Did

Q. Did the Vice-Admiral of the Red and his Division, bear down into the Admiral's Wake that Afternoon?

A. I did not observe it.

Q. Did you not see him in the Admiral's Wake any Part of the Afternoon?

A. No—I do not recollect, upon my Word.

Q. Did you ever know, in the Course of your Service, whilst the Signal for the Line of Battle ahead was flying, the Commander in Chief to order the Van or Rear Division to take the Place of the other in the Line, without being satisfied that one of those Divisions were disabled from taking their proper Station?

A. I have not.

Q. Which Division according to the Line of Battle was to lead on the Starboard Tack?

A. The Vice-Admiral of the Red.

Q. Do you remember the Signal being made for Ships to Windward, to bear down with a Number of particular Ships, Pendants flying?

A. I do.

Q. Was the *Terrible's* one of those Pendants?

A. Yes.

Q. Do you remember the first Time I afterwards saw you, that you expressed a little Concern it should have been thought Necessary to make your Signal; and that I replied to you, I only repeated the Signals from the Admiral?

A. I believe I do.

Q. Did you at the same Time inform me, that when you got down amongst the Ships, you was not able to keep your Station exactly, your Rigging and Sails not being completely refitted, and that other Ships called to you to keep out of their Way, or something to that Purpose?

A. I believe I did.

Q. About what Time was it you bore down in consequence of the Signal we are speaking of?

A. A little before Seven o'Clock, I think.

Q. Whereabouts were the leading Ships of the *French* that were forming a Line to Leeward at that Time?

A. Before the Beam—I think so.

Q. What Sail had the *Victory* set at any Time that Afternoon, when you looked at her?

A. I do not recollect.

Q. Do you know of any Signals being made in the *French* Fleet that Night, and at what Time?

A. There were some false Fires made about Eleven o'Clock that Night, I think.

Q. Was it perceived at that Time that they bore away?

A. I did not observe them, because I kept my Men to quarters all Night, and had Lights on the Lower Gun-deck.

Q. Were they pretty near to you before the false Fires were made?

A. We judged them at Dusk to be about Three or Four Miles Distance.

Q. What Part of the *French* Fleet were in Sight the next Morning?

A. Three Sail.

Q. Were they Line of Battle Ships or Frigates?

A. I took one of them to be a Line of Battle Ship, and the other two Frigates.

Q. How near do you reckon the nearest was from the *Terrible*?

A. Four or Five Miles.

Q. In what Position were they from the *Terrible*?

A. Upon the Larboard Quarter.

Q. What Time was it when you first saw them?

A. Soon after Dawn.

Q. Which Way did they stand?

A. To the Southward.

Q. Did they crowd Sail and bear away more afterwards or how?

A. They bore away as soon as they discovered us.

Q. Were those Ships pursued by the *British* Fleet.

A. They were not, that I saw; there were Signals out for some Ships to chase, which were soon hauled in again.

Q. Was any other Part of the *French* Fleet seen that Morning?

A. I did not see any.

Q. Do you know of a Signal having been made by any Ship of having seen them?

A. I do not.

Q. Suppose the *British* Fleet had chased those Three Ships, and supposing the rest of the *French* Fleet to have been to Leeward, was there not a Probability of our undamaged Ships coming up with either those Three Ships or the disabled Ships of their Fleet, if the rest of the Fleet left them, or if they had staid by them, might not another Engagement have been brought on?

A. I think not.

Q. What Sort of Weather was it in the Morning of the 28th?

A. I think it was very hazy.

Q. As to Wind and Sea?

A. There was not much Wind; there was a poppling Sea.

Q. If our undamaged Ships had chased those Three Ships, what is your Reason for supposing there was no Chance of coming up with them?

A. There appeared to me but very few of our Ships fit for chasing.

Q. Do you suppose there were none?

A. There might be some to be sure.

Q. You suppose Two of those Ships to be Frigates, had we not Four Frigates with us?

A. We had.

Q. Were some of them upon Copper Bottoms?

A. Yes.

Q. It being the Middle of Summer, short Nights, and not much Wind, do you apprehend it would have been attended with any immediate and imminent Danger if the *British* Fleet had pursued, at least so far till we had seen the *French* Fleet into Port, no Ship in the Fleet having lost her Masts?

A. I think carrying a Fleet, disabled as that was, upon a Lee-Shore, must have been attended with great Danger?

Q. How was the Wind?

A. It was about W. and W. N. W.

Q. With the Wind W. or W. N. W. and moderate Weather, if the Fleet had gone so far as to come in Sight of *Ushant*, would that have been running the Fleet into imminent Danger on a Lee-Shore?

A. No, I do not think it would, because the Channel was open.

Q. What Distance were you at Noon from *Ushant* on the 27th?

A. *Ushant* bore East of us, Thirty-seven Leagues Distance.

Q. How on the 28th at Noon?

A. About East and by North, Thirty-four Leagues.

Q. Is that a corrected Back-reckoning, or your current Reckoning at the Time?

A. The Master's Reckoning at that Time.

The Prosecutor had no further Questions to ask the Witness.

Court asked,

Q. You have observed that the Three *French* Ships

Ships were standing to the Southward, the Medium of the Bearings of the Two Days is about East Half North from *Ushant*, do you think if you had steered that Course for *Ushant*, there would have been a Probability of seeing the *French Fleet* on the 28th?

A. If I had wanted to see the *French* I should have steered E. S. E.

Q. But if you had steered for them?

A. We certainly might have seen them, but I think it would have been at a very great Distance.

Q. Supposing the *French Fleet* had not run away in the Night, but had continued to lay to, to Leeward, as they were the Night before, jogging on with the *English Fleet* in a parallel Line, do you not think that Admiral *Keppel* would have attacked them in the Morning, although he did not pursue them, or think proper to chase the Three Sail seen in the Morning?

A. I do most certainly think that he would.

Q. You are an old Officer, you have been more than once in Action, you served under a brave Man Admiral *Boscawen*, the Admiral now trying is charged with negligently performing the Duty imposed on him, inform the Court if you know any Instance on the 27th of *July*, in which he was guilty of such Neglect, or did not perform the Duty imposed on him?

A. Ever since I have had the Honour of knowing and serving under Admiral *Keppel*, I have had the greatest Esteem for him, and the highest Opinion of him as an Officer, and I have so still; but as I have been giving my Evidence upon Facts, I think my answering that Question would be judging of them, which I think I have no Right to do.

Q. Then it is supposed you do not know of any Act of the Admiral's, wherein he neglected, or did not perform his Duty—Your Opinion is not

asked—You are asked from what you saw with your own Eyes.

Before an Answer was given to this Question, it was moved to withdraw. The Court retired, and in a few Minutes returned—when the last Question was again put to the Witness, who answered,

A. Then I do not.

The Prisoner addressed the Court,

“It gives me great Pain to ask to detain you beyond the usual Hour of Adjournment. But the Three Leaves containing the Narrative of the 26th, 27th, and 28th *July*, being taken from the *Formidable's* Log-book, and supplied by others, carry with it so extraordinary an Appearance, that I trust the Court will not think me unreasonable in begging that the Master may be immediately called in to explain it.”

Prosecutor.

He will be called in Turn in my Evidence.

Prisoner.

In a Case like this, where there is such just Ground to suspect unfair and dangerous Practice, I venture to hope that the Court will think it necessary, for the Attainment of Justice, that an instant Examination should take place, to prevent all intermediate Communication.

Prosecutor.

I mean to call the Mate To-morrow Morning—he is not attending now.

Court.

The Master may be ordered to attend here To-morrow.

Prisoner.

May I have what I said entered on the Minutes?

Court.

Certainly.

It was moved to adjourn, being Four o'Clock.

Adjourned till Tomorrow Morning at Ten accordingly.

F I F T E E N T H D A Y.

S A T U R D A Y, the 23d of JANUARY, 1779.

COURT met according to Adjournment.
Prisoner brought in, and Audience admitted.

Sir Richard Bickerton called in again.

Prisoner asked,

Q. On what Tack was the *French Fleet* when they appeared to you to be in a Line of Battle at Ten o'Clock?

A. The Larboard Tack.

Q. Did you lose Sight of them any Time afterwards?

A. No.

Q. Did the *Formidable* fetch in ahead of the *Terrible* with the *French Fleet*?

A. She did.

Q. How many Ships of the Rear of the *French* had the *Formidable* to pass, when you were compelled to bear up and go to Leeward of her?

A. I think there were Three of them together.

Q. Did the Ships of the Vice-Admiral of the Blue's Division he has named to be astern of the Vice-Admiral of the Blue, come out of Action nearly at the same Time with the *Terrible*?

A. I cannot really say.

Q. Can you inform the Court at what Time the *Terrible* did come out of Action?

A. About Half an Hour after One, or rather sooner.

The Prisoner has no further Questions to ask the Witness.

The Court having none, he withdrew.

Prosecutor.

The cutting of Leaves out of the *Formidable's* Log-book is a Fact which I was totally ignorant of, till it was observed Yesterday by a Member of the Court; nor could any Person be more astonished at it than myself.—It is my anxious Wish to have this Matter fully investigated—and for that Purpose I have desired the Master of the *Formidable*, and the Mate who made the Entries in the Log-book, to attend this Morning—and that in giving their Evidence on that Point, they may be put to the severest Test, I desire they may be examined by the Court and Admiral *Keppel*, without any previous Questions from me.

William Forfar, Master of the *Formidable*, sworn.

Prisoner.

My Reason for troubling the Court Yesterday with a Request, that the Master of the *Formidable* might

might be instantly examined concerning the State of his Log-book, was to prevent any intermediate Communication between him and others upon this Subject—I must therefore ask the Master, who was the Person that first told him that the Court had discovered any extraordinary Appearance in the Log-book?

A. I heard it in a Shop Yesterday—a Woman in a Shop telling another Person, that there had been some Leaves torn out of the *Formidable's* Log-book, which was the first I heard of it.

Q. Had you any Conversation with any Body, and with whom, touching the Log-book, before the Court arose Yesterday?

A. There were several, I do not exactly know their Names, that asked me respecting the Log-book.

Q. At what Time was it those Questions were asked you?

A. When I heard of the Log-book being called in question, I came into the Witnesses Room, on Purpose to be examined if I had been called; I fancy it was about Two o'Clock.

Prisoner asked,

Q. Can you name Nobody that spoke to you before you went into the Witnesses Room?

A. As I was coming, I met Mr. *Bailey*, the Master of the *Foudroyant*, who told me I should be wanted; I answered, "Very well, I am going to the Court, having heard that the Leaves had been torn out."

Q. Did any Body else besides the Master of the *Foudroyant* speak to you upon it?

A. Not till I came into the Witnesses Room.

Q. Did any Body speak to you in the Witnesses Room?

A. I think Captain *Walsingham* came in, and said, he supposed I was there on Account of the Log-book; I said, yes.

Q. To whose House did you go after the Court was up?

A. I went to the House, next Door to the Vice-Admiral's, where the Officers of the *Formidable* generally resort.

Q. Do you live there?

A. I do not sleep there, I have sometimes, but did not last Night.

Q. Had you any Discourse about the Log-book after the Court broke up Yesterday?

A. Yes.

Q. With whom?

A. Captain *Bazeley*.

Q. Does Captain *Bazeley* live at that House where you went to after the Court broke up?

A. Yes, he sleeps there.

Q. How long did you remain at Captain *Bazeley's* House before you went to Sir *Hugh Palliser's*?

A. I cannot justly say, not long, perhaps Half an Hour.

Q. How long did you stay at Sir *Hugh Palliser's*?

A. I cannot exactly tell you, it might be an Hour, or an Hour and a Half.

Q. Who was present at the Time?

A. Almost all the Officers, I believe, that were on Shore.

Q. Name as many as you can?

A. Captain *Bazeley*, second Lieutenant *Waller*, first Lieutenant *Dickenson*, Mr. *Hills*, third Lieutenant Mr. *Meredith*, our Lieutenant of Marines, and Mr. *Holmes*, another Lieutenant of Marines, Mr. *Thomas* and Mr. *Hartwell*, and the Two Lawyers, I do not know their Names, Mr. *Ashley* and Mr. *Hargrave*, I believe.

Q. Were any Questions put to you about the Log-book.

A. Yes.

Q. When was the present Account of the Transactions of the 26th, 27th, and 28th July entered in the *Formidable's* Log-book?

A. The 25th and 26th were entered the Days of the Log's being taken off from the Log-board.

Q. When the 27th?

A. The 27th was not entered in that Book till a Day or Two afterwards, I believe; it was put in the 30th, to the best of my Recollection.

Q. What was the Meaning of that Delay?

A. I took it off from the Log-board, upon a Sheet of Paper, to shew it to the Captain and the Admiral, before I entered it in the Log-book.

Q. Was it approved of?

A. What I took off was approved of.

Q. Without Alteration or Amendment?

A. There were some Things added to it by Recollection, of Things that had been omitted.

Q. Do you recollect what they were?

A. I do not recollect exactly what they were. It was with respect to Signals and Time, I believe.

Q. Were there any Minutes of the Signals taken by any Body that this Log-book was copied from?

A. There were to the Time before we began Action.

Q. Were there no Minutes taken after that Time during the Day?

A. None that I saw, except by Recollection.

Q. Are there more than one Log-book?

A. Yes, I have another here.

Q. Is that the same as the one upon the Table?

A. Yes, except three Ships, whose Signals were made to chace in the Morning of the 28th; that is interlined in the one I have with me, and put in since, otherwise it is exact: That is the Reason I gave my Oath to the Book on the Table, but I could not to the one now with me.

Q. When was that Interlineation?

A. About the Time, or before we came to *Spithead*; I believe it was about the Time we came to *Spithead*; it could not be more than a Day or two before or after.

Q. That is not in the Log-book on the Table?

A. I believe it is not.

Q. Do you know who cut the original Entries out of the Log-book of the 25th, 26th, and 27th?

A. One of the Mates, Mr. *Winkworth*.

Court asked,

Q. What was the Occasion of those Leaves being cut out?

A. One I saw torn out; Mr. *Winkworth* had spilt some Ink upon it.

Q. When was that torn out?

A. To the best of my Recollection, it was the 25th or 26th; the Day before the Action, or the next before it.

Q. Do you know when the rest of the Leaves were torn out?

A. I did not see the rest torn out; he had done it before I came down; he told me he had done it.

The Log-book being handed down to him for Examination, he added,

To the best of my Remembrance, when I came down, he told me he had ruled one of the Leaves for two Days Work, and it would not contain the two, so he put all in one. I believe it was this, the 26th [that Day being opened to him in the Book]; the other he had omitted putting in the Minutes, from the Midshipman appointed to take Notice of the Signals, who had not put down the Hours, and which Omission, as he told me when I came down, was his Reason for tearing them out.

out. The other, as I said before, he spilled Ink upon.

Prisoner asked,

Q. Do you mean relative to the Minutes of the Signals of the 27th and 28th?

A. No, the 27th; there was nothing wrote upon the one that was inked.

Q. Did the Mate shew you these Minutes?

A. To the best of my Knowledge, I gave him the Board, and he had wrote off the Log upon the Leaf before I came down.

Q. Did you see the Minutes he wrote it from?

A. Yes, the Log board I saw before he wrote it.

Q. Do those Leaves so wrote agree with the Minutes?

A. The Entry in the Book on the Table agrees with the Minutes.

Q. Do you know what became of those Leaves that were cut out of the Book?

A. No; they were thrown away, I believe.

Q. Do you know where the original Minutes now are from whence the Signals were entered in the Log-book?

A. No.

Q. As the Day's Log of the 27th and 28th was not entered till the 30th, how could the Mate have entered them before you went down on the 26th?

A. He took them off the Board before I came down.

Q. Did the Board continue marked from the 26th to the 30th?

A. No; when he spoiled this, I took them off upon a Piece of Paper.

Q. Did you ever go to any Masters of any Ships in the Fleet under my Command, and ask to see their Log-books?

A. No.

Q. Did you not ask of Mr. Reed, Master of the *Queen*, to see his Log-book, and compare it with the *Formidable's*?

A. I went on board the *Queen* once, and he was writing his Log in his Place, and I looked at it. I do not remember I mentioned my Book at all: I said, I believed it was much the same as my own.

Q. Had you the *Formidable's* Log-book with you when you was on board the *Queen*?

A. No, never.

Q. Did you compare the Entry from the Sheet that was blotted, to see that it was fairly transcribed?

A. I do not recollect I took any Notice of the Sheet.

Q. Was the Entry of the 25th, 26th, 27th, and 28th, copied from the original Entry before the Leaves were cut out?

A. No.

Q. I mean copied into the Book under your Arm?

A. I understood it so, the 27th and 28th.

Court asked,

Q. Do you mean they were not copied till the 30th?

A. I think it was a Day or two after the Action; but as to the other, I am not clear.

Q. After the Action was over, did you see the Minutes kept by the Midshipmen on the Poop, stationed for that Purpose?

A. Those that were made before the Action I saw; there were none after.

Q. I mean, from the Morning of the 27th till after the Action was over, did you see the Minutes kept by the Midshipmen on the Poop? I do not care whether before, in, or after the Action.

The Witness here refers to his former Answer.

Q. Had you those Minutes in your Possession?

A. I had them after the Action; the Midshipmen gave me the Book.

Q. Did you shew those Minutes to the Captain, to know if he approved of them?

A. Not till I inserted them in the Paper I took the Log on.

Q. Did not you tell the Captain that the Minutes taken upon the Poop were erroneous?

A. No, I told him they were not all put down; —that the Midshipmen had taken no Notice from the Time the Action began.

Q. How do you know they were not all put down?

A. By seeing the Book, and recollecting what was done.

Q. Did you order the Minutes to be entered on the Log-board, or did you make any Alteration in the Minutes, they being erroneous, before they were entered on the Log-board?

A. They were never entered on the Log-board in general.

Q. Is it not usual for the Mate of the Watch at Sea to mark the Board every Hour, and to put Remarks of such Transactions as had happened in that Hour?

A. It is customary; but in a Fleet, I apprehend, the Signals are too many to be contained on a Board. We had two Mates on board that had never been in a Man of War before as Mates, and they were not so expert in marking the Board as I could wish; so that the Mate took it from the Midshipmen's Minute-books.

Q. So that the Mate entered the Midshipmen's Minutes in the Log-book?

A. Yes.

Q. How comes it that those Minutes do not appear which the Midshipman took on that Day's Work?

A. The only Minutes that he took that Day, were, I believe, in the Afternoon of the 26th (which is the 27th), of the Ships chasing, and in the Morning the Ships chasing again; and I do not recollect any more that were taken.

Q. From what Book did you take your Day's Work, in order to work your Reckoning?

A. From the Board generally.

Q. Did you take that every four Hours from the Board, or did you take it off at Mid-day?

A. I generally worked the Bearings of the Land at Eight o'Clock in the Morning, for fear I should be asked any Questions by the Captain or Admiral.

Q. You have said that Two of the Master's Mates never had been in the King's Service before as Mates, and therefore you was fearful that they were not so expert in marking the Log-board, or writing it down in the Log-book, as those Mates are that have been long in the Service;—did those Two Mates, or any of the Mates, consult with you before they entered on the Log-board the Transactions of the Day?

A. I generally examined the Board in the Morning, to see what had been done in the Night: If I saw any Thing I disapproved of, or wanted Correction, I sent for them, and pointed it out to them.

Q. Did you give any Orders, or point out any thing that was wrong in that Board, to either of the Mates, during the 27th and 28th of July?

A. I do not recollect particularly that I did either of those two Days.

Prisoner asked,

Q. Do you take upon you to swear positively that there were no Minutes kept of the Signals between the Time the Action ceased and Dark?

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A. I

A. I saw none from the Midshipmen.

Q. As the Midshipmen were appointed to observe Signals, and enter them in the Book, why were those Entries discontinued on so important a Day as the 27th?

A. I can give no other Reason, than that they were employed in other Things, as they were the only Midshipmen we had to depend on.

The Prisoner then addressed the Court in the following Words:

Mr. President, I shall ask no more Questions concerning the Minutes; but I cannot help expressing my Surprise, that the Midshipmen should only have taken down the Signal to chase, which the Prosecutor dwells on so much, omitting all the others, by which they were called together again during the rest of the Day; and I have only one more Observation to make on the Accuser's Address to the Court. His Offer was intended to carry the Appearance of Candour, when he requested that the Master might be exposed to the strictest Examination by the Court and me, without any previous Questions by himself; whereas it now turns out just as I expected Yesterday, when the Vice-Admiral resisted my Application to call the Master instantly,—That he has been previously examined already by Sir *Hugh Palliser* and his Friends.

Prosecutor.

Mr. President, will you permit me to refer to the Court, that I did not object to his Examination? The Question was asked, whether he was here? I did not know that he was; it was the Court requested that he should be called this Morning.

Prisoner.

The Prosecutor did desire that he might not be interrupted in the Course of his Evidence. These were his Words when I moved it.

The Prosecutor then addressed the Court as follows:

Mr. President, the postponing of the Examination of the Master Yesterday was the Act and Proposition of the Court, before I said any Thing. As to my speaking to the Master since that Time about cutting out the Leaves, it was natural that I should make an Inquiry into a Fact which I was before so totally ignorant of till Yesterday, and so much surprised at. I shall continue to give the Court the utmost Information and Satisfaction upon that Point; and for that Purpose I have sent Expresses to endeavour to find the succeeding Midshipman that was appointed as Signal Midshipman to the one that was the Signal Midshipman at that Time. He is supposed to be somewhere in a Tender in *Wales*, or he may be on board the Ship he belongs to. I have sent Expresses each Way to endeavour to get him; and if he has the original Minute-book, that it may be produced.

Prisoner.

I beg to refer to the Memory of the Court, whether the Prosecutor did not desire not to be interrupted in his Evidence, when I begged the Master might be called in Yesterday, though past the usual Hour of Adjournment, before the Court interposed at all.

Court asked,

Q. You have said you did not dictate to the Mates what should be put in the Log-book, either the 27th or 28th of *July*; you are desired to say, whether what is in the Log-Book are the Mate's own Remarks or yours?

The Remarks in the Log-book are read to him as follows:

“ Remarks, *Tuesday, July 28, 1778.*

“ Moderate and clear at Ten Minutes past One P. M. Firing ceased. We brought down the Mainyard and Mizzenmast of one of their Ships, who seemed to be otherwise very much damaged; which, as soon as Firing ceased, she bore away, and run to the Southward, accompanied by a Frigate; after we passed the last Ship, we wore and laid our Head towards them, as did Admiral *Keppel* and Admiral *Harland*; soon after the *French* wore, and laid their Heads to the Southward; we did the same, and repeated the Signal for the Line ahead, a Cable's-length asunder. Our Sails and Rigging being very much damaged, we hauled to Windward, to knot and splice, and shift Sails, most of them rendered unserviceable. At Six P. M. the Signal was made for our Division to bear down in the Admiral's Wake; and the *Fox* came under our Stern, and told us the Admiral desired the Ships of our Division to bear down under her Stern. At Dusk the Fleet appeared to be forming into a Line to Leeward, and extending parallel to us. The *French* Admiral, and the Ships that were near to him in the Center in the Action, appeared to be almost in the Rear; being the Ships that had suffered most. Fresh Gales and squally with rain most Part of the Night, and exceeding dark. At Three A. M. having knotted and spliced most Part of the Rigging, and shifted some of the Sails, bore down into our Station in the Line, expecting to engage at Day-light; but, to our great Surprise, at Day-light we found the whole *French* Fleet had stole away, under Cover of a dark Night, except Three Sail, which remained in Sight, and immediately crowded all the Sail they could to the S. E. It is uncertain whether those Three Ships had not observed the Motions of the rest of the Fleet in the Night, or whether they were left to Leeward, and by shewing the Lights, to make us believe they remained in a Line to Leeward, as at Dusk; and thereby deceive us, and cover their Retreat. Thus, after the two Fleets had been in Sight of each other four Days, which Time we used every Means to bring them to Battle, and thereby crippled some of our Ships Masts, by carrying Sail, the *French* keeping directly to Windward of us. In the Action we lost a Foretopmast-jib, Foretopmast-stay, Mainmast, Middle and Topgallant-staysails, Fore and Maintopgallant-studding-sails; and in clearing Ship, lost two Cutters; by lowering down they filled, and was obliged to cut them away. Beside, hove over-board several empty Casks, they being in the Way upon Deck.

“ Employed splicing and knotting the Rigging, and shifting the Sails.”

Q. Were these the Remarks of the Mate, or of your dictating to him?

A. I took the Log off the Board myself, upon a piece of Paper, as I have before related; I put down what Signals I could recollect myself, and asking the Signal-Midshipman, I shewed it to the Captain, who desired me to shew it to the Admiral. The Admiral approved of some, and disapproved of others, with the Remarks I had made myself, and gave me a Piece of Paper with some Remarks that he had made; so that between the Two I made the Log up for that Day of what I thought were Facts.

Prisoner

Prisoner asked,

Q. So that this Log is as it was approved by the Vice-Admiral?

The Prosecutor admitted the Master's Account to be the Fact.

Prisoner asked,

Q. Do I ask any thing improper, in desiring that the other Log-book may be laid upon the Table.

It was agreed by the Court, that the Book brought by the Master should remain on the Table, agreeable to the Prisoner's Request.

Prosecutor asked,

Q. Do you know, or have you any Reason to believe, that Captain Bazely or myself had ever any Knowledge of the Leaves of the Book being cut out before Yesterday, when it appeared to the Court?

A. No, I do not believe they had.

Court asked,

Q. When did you leave the Witnesses Room Yesterday?

A. When the Court broke up.

Q. Was you directed to leave it?

A. No, I was not; I stood before the Door till the Court broke up, thinking I might be wanted.

Q. Do you recollect at what Time you was aboard of the *Queen*, and saw the Log?

A. The Week before she sailed for *Plymouth*—I went on board to get a Passage for my Son.

Q. Can you recollect the Day, or about the Day?

A. No; it was the Week previous to the Time when Lord *Shuldham* sailed.

Withdrew.

Grosvenor Winkworth, late Mate, but now Lieutenant of the *Formidable*, sworn.

Prosecutor.

I call Lieutenant *Winkworth*, in case Admiral *Keppel* wishes to ask him any Questions.

The Prisoner declined asking any Questions till the Minutes shall come into Court, when he may find it necessary to do it.

The Court having no Questions to ask, he is ordered to withdraw.

Withdrew.

Captain James Kinneer, late Lieutenant of the *Formidable*, sworn.

Prosecutor asked,

Q. Do you recollect the Time, after the *Formidable* had ceased Firing and came out of the Action, and laid her Head towards the Enemy again, the Officers and Men being ordered to return to their Quarters, in Expectation of renewing the Engagement when Admiral *Keppel* should come up?

A. Yes.

Q. When did you first take Notice where Admiral *Keppel* was?

A. Not till we wore the second Time.

Q. At what Distance did you then reckon he was from the *Formidable*?

A. Between a Mile and an Half and two Miles.

Court asked,

Q. Where was you quartered on the Day of Action?

A. On the Main-deck.

Q. Do you remember the *Victory* and the *Formidable*'s meeting after that?

A. I remember the *Victory* passing to Windward under the *Formidable*'s Stern.

Q. Did the *Victory* stand to the Southward after she had wore?

A. Yes.

Q. Do you remember the Signal for the Line of Battle ahead then flying, a Cable's-length asunder, on board the *Victory* and the *Formidable*?

A. I do on board the *Victory*, but I am not certain with respect to its flying on board the *Formidable*.

Q. Do you remember the *Formidable*'s first hauling somewhat to Windward, out of the Way of other Ships, for them to take their Stations between us and the Admiral, and afterwards to stand after the Admiral with all the Sail she could set; trimmed as well as the Condition of the Sails and Rigging would admit.

A. I do.

Q. Did not the *Victory* increase her Distance from the *Formidable* during the whole Afternoon?

A. I believe she did in some small Degree.

Q. Did not the *Formidable* steer the whole Afternoon, keeping the Admiral a little open under the Lee?

A. Yes.

Q. Was not that a proper Course for her fetching into her Station in the Line of Battle, if the Admiral had not sailed faster than us?

A. I think it was.

Q. As the Admiral sailed faster than the *Formidable* all the Afternoon, whilst she continued to do so, was it possible for the *Formidable* to get into her Station in the Line, according to the Signal then flying?

A. I do not think it was possible in the State the *Formidable* was.

Q. Whatever Signals might be made, or whatever Messages might be sent, I repeat it again, was it possible for the *Formidable* to have complied with the Message, to get into her Station in a Line of Battle that Afternoon, unless the Admiral had waited for her?

A. I think not.

Q. Do you remember the Signal being made in the Evening for Ships to Windward to bear down, and several Ships Pendants being let fly at the same Time?

A. I observed the general Signal, and the Pendants for several Ships of the Vice-Admiral of the Blue's Division to bear down at the same Time; but I cannot say whether they were all let fly together.

Q. Were those Signals repeated on board the *Formidable* before or after the *Fox* came down to speak to her?

A. To the best of my Recollection, the Signals were made before the *Fox* hailed the *Formidable*.

Q. Do you remember the *Fox* cheering, and whether she first cheered the *Formidable*, or the *Formidable* cheered her.

A. I am pretty clear the *Fox* cheered the *Formidable* first.

Q. Where was you stationed at that Time in carrying on the Business of repairing the Rigging?

A. On the Poop, and was then there.

Q. Did the People on the Poop of the *Formidable* cheer the *Fox* first?

A. No.

Q. At what Distance did you reckon the *Formidable* from the *Victory* at Dusk that Evening?

A. I believe the *Formidable* was about one Mile to Windward of the *Victory*'s Wake, and about three Miles from her.

Q. About

Q. About what Time was it, to the best of your Recollection, that the *Fox* spoke to the *Formidable*?

A. I believe it was after Seven.

Court asked,

Q. What was the Message the *Fox* delivered?

A. I did not hear it distinctly.

Q. You was on the Poop?

A. Yes, but I did not hear it distinctly.

Q. Tell what you did hear?

A. I understood that the Purport of the Message brought by Captain *Windsor* was for the Vice-Admiral of the Blue's Division to bear down into the Admiral's Wake.

Q. Did you hear any Answer given to that?

A. No.

Prosecutor asked,

Q. Do you remember whether any of those Ship's Signals that had been thrown out, had been hauled in because of their having been observed before the *Fox* came to the *Formidable*?

A. Two Ships to Windward of the *Formidable*, which I believe were the *Egmont* and *America*, bore up shortly after the Signal was made; and upon their Pendants being hauled in, brought to again to windward of the *Formidable*.

Q. You have represented the *Formidable* not able to keep way with the Admiral (his Ship carrying Sail upon a Wind, I apprehend you mean), nevertheless, are you of Opinion, that if a Fleet was going down upon an Enemy to renew the Attack, that the *Formidable* could have gone down and have gone into Action, notwithstanding she was not able to carry Sail upon a Wind?

A. Yes, but she could not maintain her Station in the Line of a Cable's Length asunder.

Q. Did the Admiral at any Time that you know of in the Afternoon bring to, to let the Ships come up with him?

A. Not that I observed—I was employed the whole of the Afternoon, after coming out of Action, in repairing the Damages done to the Rigging and Sails.

Q. Were not the Officers and Men employed all the Afternoon and the Night in refitting the Rigging of the Ship and her Sails?

A. Yes.

Q. Was every Thing done that possibly could be done for getting the Ship into Condition, with the best Dispatch that could be to get up to the Admiral?

A. I believe there was nothing neglected by the Officers or People.

Q. Did not the Drum beat to Arms at Two o'Clock in the Morning of the 28th?

A. The Drum did beat to Arms nearly, I believe, about that Time.

Q. Were not all Hands at Quarters, and the Ship in her Station astern of the Admiral at the proper Distance, as well as could be estimated in the Night, before Day-light, ready to engage?

A. All Hands were at Quarters, and the *Formidable* was in the Line astern of the Admiral; but I cannot say whether she was exactly in her Station, as I do not know how many Ships were astern of her, and she was ready to engage; and we were in Expectation of Orders to begin firing when it was discovered there were only Three strange Sail in Sight.

Q. At Day-light, when you saw those Three strange Ships, how near do you reckon the nearest of them to have been?

A. I did not see them till the Guns were secured, and then they had bore away; and I be-

lieve the nearest at that Time was something more than a Mile from the *Formidable*.

The Prosecutor has done with the Witnesses.

Court asked,

Q. As you was on the Poop of the *Formidable*, inform us if the Log was hove from Three o'Clock in the Afternoon of the 27th, till Four o'Clock in the Morning of the 28th?

A. I did not see the Log hove at any one Time, being so much engaged about the Rigging.

Prisoner asked,

Q. You have said, that after the *Formidable* had wore and laid her Head to the Enemy, she wore back towards the *Victory*; whilst the *Victory* was with her Head to the Enemy, did the *Formidable* wear towards the *Victory* by Signal?

A. I have already said, that I did not see the *Victory* until the *Formidable* had wore the second Time, consequently do not know whether the Signal for Wearing was up or not.

Q. When you first saw the *Victory*, how were the *Formidable* and *Victory* situated with respect to each other?

A. The *Victory* was upon the *Formidable*'s Starboard Bow, and was standing towards her, I believe, in a direct Line upon the opposite Point of the Compass—I have observed, that I do not mean directly down to the *Formidable*.

Q. Did you then observe the Signal for the Line of Battle ahead flying on board the *Victory*?

A. No.

Q. Did you when the *Formidable* passed her?

A. No, not till the *Victory* went under the *Formidable*'s Stern.

Q. What Sail had the *Formidable* set, when she passed the *Victory*?

A. I do not recollect.

Q. What Sail had been set when she laid with her Head towards the Enemy before she wore to the *Victory*?

A. I do not know; as I was at my Quarters upon the Main Deck.

Q. What Sail did the *Victory* go under in the whole Afternoon, or any Part of it on the 27th when you saw her?

A. I took very little Notice of the *Victory* during the Afternoon, being employed, as I observed before, in repairing the Damages.

Q. How did you take Notice that the *Victory* increased her Distance upon the *Formidable*?

A. I observed that the *Victory* was farther from the *Formidable* in the Evening than about Three o'Clock, when she wore astern, and stood to the Southward.

Q. Was she farther from the *Formidable* at Four o'Clock?

A. I took no Account of Time.

Q. Did you ever set the *Victory* by Compass that Afternoon?

A. No.

Q. Did the *Formidable* unbend any of her Sails that Afternoon in order to bend others?

A. I believe the Fore and Mizentop-sails were shifted about Eight o'Clock.

Q. Do you remember when the Foretop-Sail was unbent?

A. No, not exactly, as I was absent.

Q. Do you remember within an Hour or Two?

A. No, I do not; but I believe the Fore and Mizentop-sails were both set by Half an Hour after Eight.

Q. Do you know whether both were unbent at the same Time?

A. I do not know.

Q. Then you do not know when the Foretop-sail was unbent?

A. No, I do not.
 Q. You say it was bent and set by Half an Hour after Eight?
 A. No, I said I believed it was.
 Q. Was there any Foretopfail to the Yard at Half past Seven?
 A. I cannot tell.
 Q. Was there any at Half past Six?
 A. I cannot tell.
 Q. Was there any at Half past Five?
 A. I cannot tell.
 Q. Was there any at Half past Four?
 A. I do not know from my own Observation.
 Q. Do you know when you first saw the Signal for Ships to bear into the Admiral's Wake?
 A. I believe it was about Seven o'Clock; I cannot speak to Time with any Certainty.
 Q. Did you not see it sooner?
 A. I did not see it till the Pendants were let fly; that was the first Time I saw it, but I cannot speak with Certainty.
 Q. How long was you employed in the Poop?
 A. I was ordered on the Poop, I believe, about Three o'Clock, I am not sure, and was there and about the After-part of the Ship, as Occasion required, most part of the Afternoon.
 Q. The Log was never hove during the whole Time you was upon the Poop?
 A. I have said that I did not see the Log hove.
 Q. Was there any Want of Seamen to expedite the Ship as fast as a well-manned Ship could expedite Business?
 A. The *Formidable* was manned as other Ships are in general, with Seamen, Landmen, and ordinary Men.
 Q. Then she was but indifferently manned?
 A. Nothing remarkable either one Way or the other.

Q. Were they sober and orderly all that Afternoon, or was there any Drunkenness?

A. I believe they were sober and orderly in general, there might be One or Two perhaps a little in Liquor.

Q. You have said you think it was Seven o'Clock when the *Fox* came to the *Formidable*,—are you sure of it?

A. I have not spoken to Time with any Certainty, nor can I.

Q. Do you think it was Half past Six?

A. I believe it was later.

The Prisoner has done with the Witnesses.

Court asked,

Q. What Sail did you wear the *Formidable* twice under?

A. The Forefail and Topfails, I believe, only, as the Jib and Foretopmast-stayfail were cut away in the Action.

Q. Were the Topfails atrip?

A. I cannot recollect, as most of the running Rigging was cut away.

Q. You said some Time ago, that on the Morning of the 28th, One of the Three strange Ships seen that Morning was within or about a Mile from the *Formidable*; did the *Formidable* fire at her, or make any Signal to the Admiral of those Ships being in Sight, or make any Preparation for chasing them?

A. I believe I said that the nearest of those Ships was above a Mile from the *Formidable*.—We did not fire at her, neither did we make any Signal to the Admiral, to my Knowledge.

Q. Do you recollect what Hour it was quite Dark at that Time?

A. I believe the Sun set a Quarter before Eight in the Latitude of 48°, on the 27th of July.

The Court adjourned till Monday Morning at Ten o'Clock.

SIXTEENTH DAY.

MONDAY, the 25th of JANUARY, 1779.

COURT met according to Adjournment.
 Prisoner brought in, and Audience admitted.

Captain Samuel Granston Goodall, of
the Defiance, sworn.

Prosecutor asked,

Q. When did you first see the French Fleet on the Morning of the 27th of July?

A. About Five or Six o'Clock.

Q. Did they appear to you then to be in a Line of Battle?

A. They did not.

Q. With what Part of the French Fleet did you begin Action that Morning?

A. With the headmost Ships of the Center.

Q. Was your Ship one of those which chased that Morning by Signal?

A. She was not.

Q. When you began the Engagement, were any of our Ships then near enough so as to give Support to each other?

A. Not when I first began the Engagement; I saw no Ship engaging the Enemy but a Three-deck Ship ahead of me, which I took to be the *Prince George*, which I drew up with soon after I began the Engagement.

Q. When you drew up with the *Prince George*, had you then joined the Center Division?

A. I apprehend she belonged to the Center Division.

Q. In the Line of Battle was she second from the Admiral?

A. Yes.

Q. Your Ship was properly one of the Vice-Admiral of the Blue's Division, was it not?

A. Yes.

Q. During your Engagement did any of our other Ships fire over you, or you over them?

A. No.

Q. When you passed the Rear of the Enemy, where was you with respect to the *Victory*?

A. The *Victory* was upon the *Defiance's* Lee-bow.

Q. To what Distance did the *Victory* stand after she passed the Rear of the Enemy before she wore, to the best of your Judgment?

A. She might be about Half a Mile, or something more, upon the *Defiance's* Lee-bow, and wore as I imagine soon afterwards.

Q. What Distance do you reckon the *Defiance* was from the Rear of the Enemy at this Time?

A. Three or Four Cables Lengths.

Q. Are you speaking of the Time when the Fleet wore?

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A. No;

A. No; I am speaking of the Time I observed the *Victory* when I came out of Action, after the Rear of the Enemy had passed the *Defiance*?

Q. Speak to the Time when the Admiral did wear, and laid his Head towards the Enemy again, at what Distance do you, to the best of your Recollection, judge the *Victory* was from the Rear of the Enemy?

A. At the Time the *Victory* wore she might be a Mile and an Half, or less than that, I suppose a Mile.

Q. Do you know when the Signal for Battle was hauled down?

A. About Two o'Clock, or a Quarter after.

Q. Was that before or after the *Victory* wore?

A. After the *Victory* wore.

Q. Did you see any Ships of the *British* Fleet dismasted?

A. None.

Q. Did you see the Admiral wear the second Time?

A. Yes.

Q. Where was the Vice-Admiral of the Red and his Division at that Time?

A. They were to the Windward of the rest of the Fleet.

Q. Had they wore and stood to the Northward before the *Victory* and the Center Division?

A. I think so.

Q. Then were they more advanced towards the Enemy than the Center Division at the Time the Admiral wore a second Time?

A. They appeared to me to be so.

Q. When did you first take Notice of the Vice-Admiral of the Blue after you ceased Firing?

A. At the Time he was near the *Victory*.

Q. Did you never look towards the Ships that remained engaged after you came out of the Engagement?

A. I did not sufficiently to retain any Ideas about them.

Q. So you did not see the Vice-Admiral of the Blue till he was near the *Victory*?

A. The first Time I saw the *Formidable*, I saw her edge down towards the *Victory*.

Q. Did you know of any Reason why the Admiral, and the rest of the Fleet, might not have wore much nearer to the Enemy than at a Mile, or a Mile and a Half Distance after they passed them?

A. I do not.

Q. If they had done so, do you know of any Reason why the Engagement might not have been continued, or immediately renewed so soon as the Vice-Admiral of the Blue came out of the Engagement with the Ships of his Division, the Vice-Admiral of the Red being at that Time to Windward of the Admiral?

A. The Separation of several of the Ships, and the disabled State that others appeared to be in, was a Reason why I think the Admiral could not have collected a formidable Body of Ships so instantly.

Q. Did you know of the disabled State of any other Ships than your own?

A. There were several appeared to be disabled in their Sails and Rigging.

Q. From the brisk Fire our Ships kept up during the Engagement, have not you Reason to suppose the Enemy suffered in Proportion to the Ships of our Fleet?

A. The Enemy did not appear to have suffered so much in their Sails or Rigging as the *English*, but I am persuaded must have suffered much more in their Hulls and in their Loss of Men.

Q. You have said that the Ships were scattered and separated much on their coming out of the Engagement, would that have been the Case if the Fleet had been formed in a Line of Battle, in which Case a Captain cannot quit his Station according to the Fighting Instructions?

A. They were separated from each other, but not scattered or divided so much as not to be able to be collected in a certain Time; they certainly would have been more connected if the Two Fleets had engaged in a regular Line of Battle parallel to each other.

Court asked,

Q. Do you think the Engagement would have been brought on that Day if the Signal had been made in the Morning for the Line of Battle in the Position the Ships were then?

A. No; I think the Admiral had always offered the Enemy Battle, it was in their Breasts alone to bear down to engage. I do not think the *English* Fleet, if formed in a Line of Battle, that Morning could possibly have attacked the Enemy.

Prosecutor asked,

Q. Did not the *French* Fleet edge down and make the Attack?

A. They partly edged down, and were partly met with by the *English* Fleet.

Court asked,

Q. Did they edge down before the Engagement began?

A. I cannot positively answer that, but I do not think their Van did edge down much.

Prosecutor asked,

Q. Did it appear to you by the Enemy's standing towards the *English* Fleet, and forming a new Line of Battle in the Evening, that they shewed a Disposition to renew the Engagement by that Motion?

A. It indicated a Disposition to receive an Attack, for they had it in their Power to have made an Attack, by making more Sail if they had chose it.

Q. You have said that after you came out of the Engagement, several Ships appeared to you to have suffered in their Sails and Rigging. How many of them did you observe in that State at that Time, without regard to any Thing you have heard since?

A. Ten or a Dozen of them I saw with my own Eyes.

Q. Do you think they were not in a Condition to attack an Enemy, who you say shewed a Disposition to receive them?

A. Towards the Close of the Day I believe they were.

Q. Was your Ship in that Condition that you were not fit to continue in Action if you had an Opportunity of lying along-side one, after you came out of the Engagement?

A. She was ready for Action in Thirty or Forty Minutes afterwards.

Q. Did you see the Vice-Admiral of the Red and his Division, bear down into the Admiral's Wake that Afternoon?

A. I saw the Vice-Admiral of the Red bear away, but in a Position to go ahead of the Center Division, and pass to the best of my Judgment under the Lee of the Vice-Admiral of the Blue, and to Windward of the Commander in Chief.

Q. Do you know whether the Vice-Admiral of the Red was ordered to take the Station of the Vice-Admiral of the Blue, astern of the Admiral?

A. No.

Q. Were not the Ships of the Vice-Admiral of the

the Blue's Division, the last that came out of the Engagement?

A. I believe so.

Q. Were not the Ships that you speak of as disabled in their Sails and Rigging, chiefly of that Division?

A. There appeared to me to be some of that Division, and I suppose some belonging to others, I could not imagine that the whole of that Division was in that State.

Q. Can you speak with Certainty that Part of them were Ships of other Divisions?

A. I cannot, but I presume so, as many of them were ahead of me at that Time, and upon my Lee-bow at considerable Distances.

Court asked,

Q. How many of the Vice-Admiral of the Blue's Division did you see disabled?

A. I did not at that Time make any particular Observation what Division the Ships belonged to.

Prosecutor asked,

Q. Did you observe what Sail the *Victory* carried that Afternoon, after she stood to the Southward?

A. I think when she first stood to the Southward, she had the Forefail and Topfails, and soon after her Topfails only, but I cannot positively speak to every Alteration of Sails.

Q. What Part of the Enemy's Fleet were in Sight the next Morning?

A. Three Sail of Ships were about a Mile and a Half or Two Miles from the *Defiance* astern; and taken for French Men of War, but the Body of the French Fleet was not seen from the *Defiance*.

Q. Did you take those Three Ships to be Line of Battle Ships or Frigates?

A. The nearest Ship I took to be a Line of Battle Ship, the others were smaller Ships.

Q. Were they chased by the British Fleet?

A. I believe they were.

Q. By what Ships, and how long?

A. For a short Time only, and I know not by what Ships.

Q. Did they set all their Sails?

A. That I cannot speak to.

Q. Was there any Signal made for leaving off Chase?

A. I do not recollect.

Q. I think you said they were One Mile and a Half or Two Miles from the *Defiance*, did they appear to you to be nearer to any other Part of the English Fleet?

A. They must have been somewhat nearer to the Ships that were astern in the Line.

Q. Amongst those Ships you mention to have seen when you first came out of the Engagement, disabled in their Sails and Rigging, were any of them of the Vice-Admiral of the Red's Division?

A. I do not recollect that any of them did belong to the Red Division.

Q. Besides those Ten or Twelve Ships that you mention to have been disabled in their Sails and Rigging, immediately after coming out of Action, were there not Eighteen or Twenty that appeared not to be so?

A. The Ships that had suffered in their Sails and Rigging drew more my Attention—but I suppose there might be so.

Q. Were the Frigates disabled?

A. I do not remember having seen a Frigate from the Time I engaged, nor during the whole Afternoon.

The Prosecutor has done with the Witness.

Court.

You have heard the Charge read against Admi-

ral Keppel. He is charged by the First Article with Negligence in performing the Duty imposed on him. By the Third he is charged with not doing the utmost in his Power to take, sink, burn, and destroy the French Fleet. By the Fourth he is charged with putting the British Fleet in a disgraceful Position, having the Appearance of a Flight, and that the French Fleet offered it Battle—and that the French have published to the World, that the British Fleet ran away. By the Fifth Article he is charged, for that, by his Misconduct and Neglect, the Honour of the British Navy was tarnished by the said Admiral Keppel. Now you will acquaint the Court, if you know of any Action of Admiral Keppel, either on the 27th or 28th of July, wherein he was guilty of the Charges alleged against him in the different Articles in the Charge—And you will remember, you are not asked as from Opinion, but from your own Knowledge.

A. No Man can have more Esteem or Respect for Admiral Keppel than I have, and I think him highly valuable, both as an Officer and a Gentleman; but as this is a Question that tends to my passing my Judgment upon the Charge, who am only a Witness, I must beg Leave to decline answering it. It appears to me to be rendering my Evidence nugatory—and I think it an Assumption upon the Court, in whom Judgment upon that Evidence rests alone, and not with me.

Court.

Your Judgment is not asked—We are to judge, acquit, or condemn Admiral Keppel. A Charge is sent to us, which Charge we are ordered to try him upon. In order to come at the Facts, Evidence are examined, and we have heard every Thing that has been said by the Evidence. We are to judge upon that afterwards, how far it will acquit or condemn. But in order to prove the Charge, we ask a fair and an honest Question, both for our Country and for the Prisoner; for our Country, if he has done that which has disgraced it, we desire to know it—If he has not done so, we desire to know it also. We only ask, from your own Knowledge as a Commander of one of the King's Ships there, whether you saw any Act of Admiral Keppel, in which he falls guilty of the different Articles in this Charge?

A. As a Witness, I have further Objections to answer a Question that is giving a Judgment upon the Charge—from the possible Situation that I, or the Men I love in the Service, may one Day or other be placed in by a malignant Prosecution—and the Evidence that can support or refute the Charge, to be drawn from the same Source—a Source of Discontent; and therefore, as these Consequences might be fatal to my own Character, to my own Honour, or perhaps the Life of those I love—I would wish to decline answering that Question.

Court.

Q. If every Evidence that appears before the Court declines giving an Answer to Questions that are asked him, it is impossible the Court can ever be a Judge whether the Prisoner has been guilty of the Charge alleged against him or not. If a Witness sees a Man guilty of an Act, it is his Duty to say it; if he did not see him guilty of an Act, it is his Duty also to say it, in order to save the Life of a Man, who has a very heavy Charge against him.

A Member observes,

This must be entirely Matter of Opinion.

Answer by a Member,

No, it is not; I ask for Facts. The Gentleman

man is a Captain in a Squadron; I asked him if he saw it? If he did, he will say Yes.

Captain Goodall.

May I be permitted to speak? If my Opinion, or passing my Judgment declaratory upon the Charge, or Parts of the Charge selected from each other, had been proposed to me at first coming into this Court, I should not have had the least Objection to have done it, provided it had been to preclude any further Examination.

A Member replies,

You have not a Right to dictate to the Court when you will answer to a Question; if you would say it at first, you will say it at last.

Prisoner.

Q. Where was the *Defiance* on the Morning of the 27th?

A. On the Lee-quarter of the *Formidable*.

Q. Did you see the Signal for any Ships to chase to Windward?

A. I was not upon Deck when that Signal was made.

Q. Did the Officers inform you of it?

A. Soon afterwards I was informed of it.

Q. Do you recollect what Sail you was under at that Time?

A. Foresail and double-reefed Topsails.

Q. Did you make more Sail in the *Defiance* on the Signal being made to chase?

A. No, I did not.

Q. You said you came to Action close astern of the *Prince George*—Were not several Ships engaged ahead of the *Prince George*?

A. The Enemy had fired Twelve or Fifteen Minutes upon the *Defiance* before she returned any Fire; when the Smoke, which was very great, cleared up, I perceived the *Prince George* ahead, and drew soon afterwards close up with her.

Q. At this Time was the *Sandwich*, or any other of the Center Division, drawn close up astern of the *Defiance*?

A. There was no Ship astern of the *Defiance* that I saw in the Action for some Distance; I rather guess at it than know it.

Q. You said you received the Fire of several of the *French* Ships for some Time before you began Action—With what Ship ahead or astern of the *French* Admiral, or was it the *French* Admiral himself you began with?

A. The second Ship ahead.

Q. How many *French* Ships were there astern of the *French* Admiral in the Hundred Gun Ship?

A. I really do not recollect, nor could I count them, the Smoke and Fire were so heavy.

Q. Were there Six or Seven astern of him?

A. I apprehend there might.

Q. Were there Eight or Nine?

A. There might be that.

Q. Did you see whether there were Three *French* Flag Ships together?

A. I think there were Two very near together.

Q. Was the *French* Admiral in the Center of his Fleet?

A. I think he was not.

Q. Did you see the Signal for the Line of Battle ahead flying on board the *Victory*, whilst she was advancing towards the Enemy on the Larboard Tack, after the Action?

A. I did.

Q. Did you see any, and how many, Ships forming in a Line ahead or astern of the *Victory*, whilst she continued to stand on the Larboard Tack?

A. To the best of my Judgment, there were not many.

Q. Do you know there were any?

A. I think there were some.

Q. Can you name them?

A. If I mistake not, the *Foudroyant* might be one, and the *Prince George* might be another—I am not certain.

Q. Had you repaired your own Damages so as to be able to get into the Line yourself?

A. At what Hour do you speak?

Q. Whilst the *Victory* was standing on the Larboard Tack, with the Signal for the Line of Battle flying.

A. We had then wore, and were standing on after Sir Robert Harland's Division.

Q. Was you able to get ahead of the *Victory*, whilst she was on the Larboard Tack, with the Signal out for the Line of Battle? I mean, Was your Rigging repaired Time enough for you to do it?

A. We had wore, with our Rigging still in a disordered State, except what contributed to assist in wearing the Ship—but bringing on Canvas forward as fast as possible. We were much to Windward of the *Victory*, which, as I apprehend, was on our Lee-beam or Lee quarter.

Q. Were your Damages so repaired, as to enable you to take your Station ahead of the *Victory*, which was your Station in the Line of Battle?

A. Had the Signal for the Line of Battle been out at the Time the *Defiance* wore, she could have done it; but she had stood on after Sir Robert Harland's Division, and had got so far ahead as to bring the *Victory* upon her Lee-beam, before the Signal for the Line of Battle was seen—and soon after, to the best of my Judgment, the Admiral stood with his Head to the Southward.

Q. At what Time in the Afternoon did you rejoin the Division of the Vice Admiral of the Blue, after you came out of Action?

A. I edged down to the Vice Admiral of the Blue when the Red Division bore away and stretched forward to get ahead of the Center.

Q. How was the Vice Admiral of the Blue situated with respect to the *Victory*, when the Vice Admiral of the Red passed between the *Formidable* and her to go ahead?

A. At the Time I joined the Vice Admiral of the Blue, the *Victory* had her Head to the Southward, to the best of my Judgment, and was not at any great Distance when the Red Division began to pass between the Center and the Rear Divisions.

Prisoner has done with the Witness.

Court asked,

Q. Do you know any Part of the Days of the 27th or 28th of July, that the *English* Fleet ran away from the *French* Fleet, or shewed any Appearance that could be so construed?

A. No.

Q. Do you know any Part of the Days of the 27th or 28th of July, that the *French* Fleet ran away from the *English* Fleet, or shewed any Appearance that could be so construed?

A. On the 28th July the *French* Fleet avoided, and fled before, the *English* Fleet.

A Member of the Court observed,

That Captain Goodall's Evidence had given more Satisfaction than any Man that had appeared before; but upon one Question he seemed to make a Doubt, whether he had a Right to give an Answer, or whether this Court was to enquire into the Charge alleged against Mr. Keppel—I only beg that the Order to Sir Thomas Pye, President, to hold the Court-Martial, may be read, as far as relates to the Trial of Admiral Keppel; by which it will appear, that this Court is strictly to adhere to the Charge, and that the Evidence to be produced

duced before us is mere Matter of Opinion in general.

*The Order was read.
Captain Goodall withdrew.*

Jacob Waller, *Third Lieutenant of the Formidable, sworn.*

Prosecutor asked,

Q. What Distance was the *Victory* with the Body of the Fleet from the Rear of the Enemy, at the Time the *Formidable* passed the Rear of the French Fleet, and ceased firing, to the best of your Judgment?

A. I do not recollect to have seen the *Victory*, at the Time of passing the Rear of the Enemy.

Q. Did the *Formidable*, immediately after passing the Rear of the Enemy, wear and lay her Head towards the Enemy again?

A. Yes.

Q. What Time do you recollect you afterwards first took Notice of the Admiral and the Rest of the Fleet?

A. I do not recollect seeing the Admiral, until we wore a second Time. As to the Time of the Day I cannot speak.

Q. At what Distance do you think he might be?

A. To the best of my Recollection, the Admiral was then a Mile and a Half, or more.

Q. Whilst the *Formidable* lay with her Head towards the Enemy, were not the Officers and Men ordered to their Quarters, in Expectation of renewing the Engagement when the Admiral and the Fleet should come up?

A. We were ordered to our Quarters, and of course, I supposed, it was expected we should engage?

Court asked,

Q. Where was you quartered?

A. On the Lower Gun-deck.

Prosecutor asked,

Q. When the *Formidable* wore a second Time to stand towards the *Victory*, was not the Signal for Battle then hauled down, or was it flying?

A. I do not recollect.

Q. Whilst the *Victory* and *Formidable* were standing towards each other, was not the *Victory* End-on directly towards the *Formidable*?

A. We were standing parallel with each other, nearly, I believe, at opposite Points of the Compass, very little Way to Windward.

Q. Did you see the Signal for the Line of Battle flying on Board the *Victory* before the *Formidable* came close to her?

A. I do not recollect to have seen the Signal for the Line of Battle on Board the *Victory*, before she came close to the *Formidable*, and was wearing under our Stern.

Q. Whilst the *Formidable* was standing towards the *Victory*, did you see any one Ship between them that appeared to have taken her Station in the Line ahead of the Admiral?

A. I do not recollect to have seen any.

Q. When the *Victory* and *Formidable* met, did the *Victory* wear under the *Formidable's* Stern, run to Leeward, and then haul her Wind to the Southward?

A. Yes.

Q. Did not that leave the *Formidable* astern, and to Windward withal?

A. We were of course to Windward, and as the *Victory* went ahead, we must be astern of her.

Q. After the *Formidable* had got out of the Way of other Ships, did she stand after the Ad-

miral with all the Sail she could set, trimmed as well as the Condition of her Rigging would admit?

A. Yes.

Q. Was she at that Time in a manageable Condition to keep her Station in a Line of Battle between two Ships, at a Cable's Length asunder, if she could have got into that Station?

A. I do not think she was.

Q. Did not the *Victory* increase her Distance from the *Formidable* during the whole of the Afternoon?

A. Yes.

Q. Did the *Formidable* steer during the Afternoon to keep the Admiral a little open under her Lee?

A. To the best of my Recollection, she did.

Q. Was that a proper Course for fetching into her Station, as the Admiral was under Sail and not lying to?

A. I think it was.

Q. Was every Thing done on Board the *Formidable* that was possible to refit her with the utmost Dispatch?

A. To the best of my Judgment, every thing was done.

Q. As you have stated that every Thing was done that could be done, to put her into a proper Course for fetching into her Station; that the Admiral continued to increase his Distance, that he did not bring to, to let the Ships get into their Stations; I will now ground a Question on those Considerations, whatever Signals were made, whatever Messages were sent, and at whatever Time such Signals might be made, or such Messages sent, was it possible for the *Formidable* to have got into her Station in the Line, unless the Admiral had waited for her?

A. I have before observed, I believe that we did every Thing we could to get into our Station; and the Admiral gained upon us, of course we could not get into our Station without the Admiral had waited for us.

Court asked,

Q. If the Admiral had bore down and waited for the *Formidable*, should you have been able to have renewed the Attack?

A. I cannot be a competent Judge in a Question of so much Importance.

Prosecutor asked,

Q. Do you know if the Admiral did bring to, any Part of that Afternoon, in order that the Ships might get into their Stations?

A. I do not know that the Admiral did bring to.

Q. Did you happen to observe at any Time, what Sail the *Victory* was under that Afternoon?

A. I do not recollect that I did.

Q. From the State you know the Rigging of the Foremast was in, was it safe to carry Sail upon that Mast upon a Wind, till Stays were got up and the Rigging repaired?

A. I think not.

Q. Was it not in Danger without any Sail upon a Wind till the Rigging was repaired?

A. That was the general Opinion on Board the *Formidable*.

Court asked,

Q. From the Time the *Formidable* came out of Action and laid her Head towards the Enemy, how long was it before you went upon the Forecastle to see the State and Condition of the Foremast and Rigging, you being quartered on the Lower-deck?

A. I do not recollect, I was upon the Forecastle.

Q. Then, you do not speak from your own Knowledge, but from Hearsay?

X

A. I

A. I believe I have said so.

Prosecutor asked,

Q. Do you remember the Signal in the Evening for Ships to Windward to bear down, and several Ships Pendants then let fly?

A. I remember several Ships Pendants flying, but for what Ships or for what Purposes I cannot say.

Q. Were those Pendants repeated on Board the *Formidable* before or after the *Fox* came to speak to her?

A. I believe before.

Q. Do you remember whether the *Fox*'s People, or the *Formidable*'s People cheered first?

A. I perfectly remember, the *Fox* cheered first.

Q. Where were you stationed for perfecting the Repairs carrying on in the Rigging?

A. I was stationed at the main Rigging.

Q. Did you happen to be in the Way to hear the Message delivered by the Captain of the *Fox*?

A. I remember to have heard something pass, but I do not recollect what it was.

Q. Notwithstanding the Damages you mention the *Formidable* received, and although she was not able during the Afternoon to reach her Station in the Line of Battle as the Admiral did not stay for her; do you not think she was capable of going down before the Wind and engaging an Enemy, if the Admiral and the rest of the Fleet had done so?

A. We were certainly capable of going to Leeward, and of engaging an Enemy, if we had come along-side of a Ship at a proper Distance.

Court asked,

Q. Do you mean that you were capable of going down and keeping your Station in a Line of Battle?

A. I have before observed, that we were capable of going down, but not of keeping our Station in the Line of Battle.

Prosecutor has done with the Witnesses.

Prisoner asked,

Q. When the *Formidable* was on the Larboard Tack standing towards the *French*, did you see the repeating Frigate?

A. I did not attend to the repeating Frigate.

Q. Did you in the Afternoon, at any one Time, set the *Victory* by Compass?

A. No.

Q. Did you at any Time in the Afternoon, observe the Signal for the Line of Battle and blue Flag at the Mizzen-peak on Board the *Victory*?

A. Do you mean after the *Victory* wore and stood from the *Formidable*?

Q. After the *Victory* wore with her Head to the Southward.

A. I do not recollect to have attended to any Signals on Board the *Victory*, after she was on the Starboard Tack.

Q. Then I am to understand your Attention was to the Employment you were appointed to, knotting and splicing the Rigging?

A. That engrossed the greatest Part of my Attention.

Q. Was you assisted by the Men properly, and like good Seamen all that Time?

A. I think I was.

Q. Had they any Wine or Grog given to cheer them up that Afternoon?

A. Not to my Knowledge.

Q. What Time was the Foretop-sail unbent on board the *Formidable*?

A. I cannot charge my Memory with Time.

Q. Do you know within Half an Hour, an Hour, an Hour and a Half, or Two Hours?

A. I cannot pretend to say what Time.

Prisoner has done with the Witnesses.

Witnesses withdrew.

John Hills, *Fourth Lieutenant of the Formidable, sworn.*

Prosecutor asked,

Q. Do you recollect the first Time you took Notice of the *Victory* and the Body of the Fleet after the *Formidable* first came out of the Engagement?

A. I saw her soon after the *Formidable* wore, and laid her Head towards the Enemy.

Q. At what Distance, according to the best of your Judgment, was she then from the Rear of the Enemy at the Time the *Formidable* passed the Rear of the *French* Fleet?

A. I should judge her to have been about Two Miles.

Q. Did not the *Formidable* immediately wear and lay her Head towards the Enemy after she had past the sternmost of the Enemy's Ships?

A. Soon after she did.

Q. When you first saw the *Victory* and the Body of the Fleet, were they standing towards the *French* and towards us as we were just by them?

A. To my best Recollection they were, the *Victory* was standing towards the *Formidable*.

Q. Were not the Officers and Men on board the *Formidable* ordered to their Quarters in Expectation of renewing the Engagement when the Admiral and the Fleet should come up.

A. They were ordered to their Quarters.

Q. When the *Formidable* wore again to stand towards the *Victory*, was not the Signal for Battle hauled down?

A. I did not see it flying.

Court asked,

Q. Did you wear by Signal or not?

A. I do not know.

Q. Did you see any Signal for wearing?

A. I did not.

Prosecutor asked,

Q. Whilst the *Formidable* was standing towards the *Victory*, was not the *Victory*'s Head directly towards her?

A. To the best of my Remembrance it was.

Q. Can you remember when first the Signal on board the *Victory* for the Line of Battle was seen from the *Formidable*?

A. I cannot tell.

Court asked,

Q. Was you not in such a Situation when your Head was towards the *Victory*, that the Signal for the Line of Battle might have been out on board the *Victory* and you not see it?

A. Yes, it was very possible, the Ship was End-on.

Q. Where were you quartered?

A. On the Lower-deck in Time of Action, but at the Time the Ship wore, on the Fore-castle.

Prosecutor asked,

Q. Do you remember whilst the *Formidable* was standing towards the *Victory* whether you saw the repeating Frigate or not?

A. I do not remember to have seen her.

Q. Suppose she was near the *Victory*, and steering the same Course with the *Victory*, might not a Signal on board of her have been equally as imperceptible to the *Formidable* as it was on board the *Victory*?

A. I think so.

Q. Did you observe, as we stood towards the *Victory*, whether any Ships had taken their Stations ahead of her in a Line, or whether there were any Ships between us and her?

I

A. I

A. I did not observe any.

Q. When the *Victory* and *Formidable* met, did the *Victory* run under the *Formidable*'s Stern, run to Leeward, and then haul the Wind to the Southward?

A. I think she did.

Q. Did not that leave the *Formidable* astern and to Windward withal?

A. Undoubtedly.

Q. After the *Formidable* had got out of the Way of other Ships, did she stand after the Admiral with all the Sail she could set, trimmed as well as the Condition of the Sails would admit?

A. It appeared so to me.

Q. Notwithstanding, did not the *Victory* increase her Distance during that Afternoon.

A. The *Victory* did increase her Distance from us that Afternoon.

Q. Did not the *Formidable* steer all the Afternoon keeping the Admiral a little open upon her Lee-bow?

A. I was not on Deck all the Afternoon; when I saw her she did.

Q. Was that a proper Course for fetching into her Station in a Line of Battle, as the Admiral was under Sail?

A. I should think so.

Q. Was every Thing done that was possible for refitting the Ship with the utmost Expedition?

A. I think so.

Q. Where was you stationed for the Purpose of carrying on the Work of refitting?

A. On the Forecastle.

Q. Who else of the Officers were there at the same Time?

A. Captain Bazeley, and the Master sometimes.

Q. Had not you almost all the running Rigging to new reef, as well as almost all the standing Rigging to knot and splice, and a new Forestay and Springstay to get up?

A. We had.

Q. Was not the Boatswain killed in the Action?

A. Yes.

Q. Was not the Loss of him very severely felt in getting the Ship refitted in her Rigging and Sails?

A. Very much felt.

Q. Were not you deprived of the Assistance of Three of the Lieutenants for that Purpose, Two of them being sick and unable to attend, and One wounded?

A. Two of them were sick and unable to do Duty, and One wounded.

Q. As you have stated that every Thing was done that could possibly be done; that she steered the proper Course for fetching into her Station; that the Admiral continued to increase his Distance; that he did not bring to, to let the Ships get into their Stations, I will now ground a Question upon those Considerations—Whatever Signals were made, whatever Messages were sent, and at whatever Time such Signals might be made, or such Messages sent, Was it possible for the *Formidable* to have got into her Station in the Line unless the Admiral had waited for her?

A. I do not imagine it was possible.

Q. Did you happen to take Notice what Sail the *Victory* was under any Time in the Afternoon?

A. I did not observe.

Q. Do you recollect about what Time the Foretop-sail was unbent?

A. I do not exactly remember the Time.

Q. At what Time was a new one set?

A. At Eight o'Clock.

Q. Was that as soon as it was safe to set upon the Mast being upon a Wind?

A. I judge so.

Q. During the Time you was employed in refitting the Rigging, did you observe any Tardiness among the People, or any Disorder and Confusion among them that prevented carrying it on with all possible Dispatch and Propriety?

A. I saw none, and I believe every Dispatch was used.

Q. Was some Wine given to them to encourage and refresh them, and was that before or after the Work was done and the Sails set, or about what Time was it?

A. The Sails were set, and Half a Pint of Wine given to each Man. I judge it was between Nine and Ten o'Clock at Night.

Q. Did that occasion any Interruption, and retard the Duty of the Ship, or was it of Use and Encouragement to the Men?

A. I think it encouraged them very much, and was by no Means the Cause of any Tardiness.

Q. Do you remember the Signal in the Evening for Ships to Windward to bear down, several Ships Pendants being let fly for that Purpose?

A. I remember several Ships Pendants being let fly on board the *Formidable*, and understood it was a Signal for them to bear down.

Q. Were those Ships Pendants let fly on board the *Formidable* before or after the *Fox* came down to her?

A. Before the *Fox* came down to her.

Q. Do you remember whether the *Fox*'s People or the *Formidable*'s People cheered first?

A. I remember the *Fox* cheered first from an Expression of Captain Bazeley's at that Time, which was, "That's hearty, my Lads—return the 'Cheer.'"

Q. During the Afternoon of the 27th, notwithstanding the Damages received, might the *Formidable* not have bore down and engaged an Enemy to Leeward, if the Admiral and the rest of the Fleet had done so, although she was not able during the Afternoon to take her Station in the Line upon a Wind, unless the Admiral had waited for her?

A. I do think she might have bore down and engaged an Enemy, though not able to follow the Admiral in a Line upon a Wind and keep him Company.

Prosecutor has done with the Witnesses.

Court asked,

Q. In the Condition the Ship was, did it authorize her going down and seeking Engagement with an Enemy?

A. She might have gone down to an Enemy.

Q. Where was you at the Time you heard the Cheers exchanged between the *Fox* and *Formidable*?

A. On the Forecastle.

Q. Did you hear what Conversation passed between the Two Ships?

A. No, I did not.

Prisoner asked,

Q. You have observed that the *Victory* was upon the *Formidable*'s Lee-bow, did you ever set her by Compass?

A. I did not.

Q. From your Observations of her, did you take Notice of any Signal flying on board her from Three till Dark?

A. I

A. I did not see any Signals on board her.

Q. You was so employed, that only when you cast your Eye upon her, you saw her on the Lee-bow?

A. I saw her at different Times on the Lee-bow.

Q. And at no one of those Times set her by Compaſs?

A. I did not set her by Compaſs at all.

Q. But as a Seaman you can answer whether her being upon the Lee-bow was One, Two, Three, or Four Points.

A. I beg to know at what Time?

Q. At Half after Four, at Five, or at Half after Five?

A. I did not mean to ask at what Hour, but when the *Victory* passed the *Formidable* to Leeward, she must have been first of all upon her Beam, then drawn forwards so that she must have altered her Bearings considerably.

Q. At what Hour did the *Victory* pass the *Formidable*?

A. I do not recollect the Time.

Q. Then I will ask you, at one Hour before the *Fox* spoke to you?

A. If I can judge of Time, she was then a Point and a Half upon our Lee-bow.

Q. Was the *Formidable* close upon a Wind at that Time?

A. It appeared so to me, or nearly.

Q. At the latest Part of the Day, at Half past Seven, how did the *Victory* bear then upon the *Formidable*?

A. I have already said, I did not know the Hour of the Day, but late in the Evening she was on the Lee-bow, about one Point.

Q. How many Cheers did the *Formidable* give the *Fox*?

A. I cannot charge my Memory with that, I think one.

Q. Was there no other Cheer at any other separate Time given to the *Fox*?

A. I do not remember any.

*Prisoner has no further Questions to ask.
Witness withdrew.*

Sir John Lockhart Ross, Baronet, Captain of the Shrewsbury, sworn.

Prosecutor asked,

Q. Do you remember the first Time you saw the *French* Fleet on the Morning of the 27th of July?

The Witness had Leave to have Recourse to his Minutes, which he said were taken at the Time.

A. At Four o'Clock in the Morning, I saw the *French* Fleet, standing to the N. W.

Q. How long did they continue upon that Tack?

A. They began to wear about Eight o'Clock in the Morning.

Q. Did the Van or the Rear wear first?

A. The Van.

Q. Did they wear successively in each other's Wake?

A. They did.

Q. How long did they continue to stand on that Tack after they had all wore?

A. At Half past Nine I lost Sight of them, being squally and thick to the South-west.

Q. After they had wore as you have described successively in each other's Wake, did they appear to you to be in a Line of Battle?

A. They did appear to be in a Line of Battle

after they had all wore, standing to the South-west.

Q. What Distance might there be between you and the Van of our Fleet at Eight o'Clock in the Morning?

A. I cannot answer that exactly, but about Four o'Clock in the Morning the Center seemed about Eight or Nine Miles to Windward from me.

Q. When did they change their Tack again?

A. At Ten o'Clock, when it cleared up, I saw several of them before the Wind. The whole *French* Fleet immediately hauled their Wind, to the North-west.

Q. Then they wore again with their Larboard Tack, to come to the North-west?

A. Certainly.

Q. After they had their Heads to the North-west, did they appear to you to be in a Line?

A. More irregular than I had perceived them any of the preceding Days.

Q. You was in one of the Ships first fired upon by the *French*, when the *French* began to attack, did they edge down upon the Part of the Fleet where you was, and begin to fire upon you?

A. I cannot say whether they bore down or not, I was so attentive in conducting my own Ship that I cannot answer that Question?

Q. You have represented that the first Motion you observed of them was, their wearing successively in each other's Wake, and that they were afterwards formed into a Line, that they wore again, and attacked the *British* Fleet?

A. They certainly fired first; they fired Two Shot without Colours being hoisted?

Q. Do you consider their wearing twice, when they might have tacked, as an Indication of their avoiding coming to Action, or of their intending to come to Action?

A. In answer to that, when I lost Sight of them in the Squall I told my Officers, that if the Squall continued much longer, we should see them to Leeward of us, judging from their former Conduct, that they intended to push for *Brest*. When I saw them, there were Six of them before the Wind at one Time, so that I ordered (though it was not executed) the Studding-sail Booms to be rigged out, and to bear away Two Points.—I had no sooner ordered it than they then hauled their Wind to the North-west.

Q. As they hauled their Wind to the North-west, if you had kept the Wind, in the Situation your Ship was then in, would you have been able to have fetched their Van?

A. I never bore away, the Orders were given but not executed.

Q. Was your Ship considerably to Windward of the rest of the Division at the Time now speaking of?

A. I was the Headmost Ship—but whether to Windward, I cannot say.

Q. Did you chase by Signal that Morning?

A. At a Quarter after Five my Signal was made to chase to Windward, we being the Weathermost Ship of the Fleet at that Time.

Q. When the *French* got upon the Larboard Tack, and fired upon you, did they seem to you at that Time to keep their Wind?

A. They seemed to me to be close upon a Wind.

Q. Did they seem to be so to you after they had passed you, whilst the *French* and *British* Fleets were passing each other; or did the *French* appear to edge away?

A. If you mean while I was engaged myself, I was so employed in the Business of my Ship, and

on account of the Smoke that I could form no Judgment.

Q. After the Red Division past the Rear of the Enemy, did not you in the *Shrewsbury*, wear and stand for the Enemy again, before any other Ship of your Division?

A. I did.

Q. Do you remember your having declared at the Time you directed that to be done, that you intended to attack the Rearmost Ship of the Enemy the Moment you could get up to her, or something to that Purpose?

A. I do not recollect I ever did.—I had no sooner wore than I saw I should throw myself and the Ships which were standing towards me, into the greatest Confusion, and I wore back again almost instantly.

Q. What were your Intentions by wearing at the Time you first wore?

A. As there was no Signal out for the Line of Battle at that Time, I certainly wore with an Intention to pursue the *French*, but seeing that I should throw myself and the Ships, as I said before, into Confusion, I wore almost momentarily back again.

Q. Do you remember after the Red Division was out of the Engagement, at any Time taking Notice of the Vice-Admiral of the Blue whilst he remained engaged?

A. I do not remember any Thing particular of the *Formidable*, but my Remark was, that the Blue Division, and several other Ships, were engaged with the *French* Fleet till near Forty Minutes past One, they having passed the *French* Fleet, the Signal was then hauled down for engaging, which was repeated by the Vice-Admirals of the Red and Blue Divisions.

Q. Did you take Notice of the *Formidable* laying

her Head towards the Enemy again, after she came out of Action?

A. I did not; the Reason for it was, that at Half past Twelve, Vice-Admiral Sir *Robert Harland* made the Signal to tack; we then tacked, stood after the *French* Fleet, and my attention was chiefly taken up in conducting my Ship.

Q. At the Time the last of our Ships came out of Action, how was the Vice-Admiral of the Red and his Division situated with respect to the Rear of the Enemy?

A. When the Red Division tacked and stood to the Northward, the Sternmost of the *French* Fleet were then ahead of us on our Lee-bow, when we were close to the Wind.

Q. After your Division had tacked, did not you make Sail, and draw up with the Rear of the Enemy?

A. We were under Sail, but what Sails were out, I cannot say.

Q. Did the Red Division tack some Time before the Center Division wore?

A. They did; not that I can mention the Time the Center Division did wear, but that we certainly tacked before they wore.

Q. As you tacked before they wore, was your Division considerably nearer the Enemy than the Center Division?

A. We were nearer, but the Distance I cannot ascertain.

Q. Can you form a Judgment of the Distance the Admiral and the Center Division were from the Enemy when they wore?

A. I really cannot.

The Court then adjourned, being near Half past Three o'Clock, till To-morrow Morning, Ten o'Clock.

SEVENTEENTH DAY.

TUESDAY, the 26th Day of JANUARY, 1779.

COURT met according to Adjournment. Prisoner brought in, and Audience admitted.

Sir John Lockhart Ross called in again.

Prosecutor asked,

Q. Do you recollect what Distance the Red Division stood beyond the Enemy before they tacked?

A. I cannot tell, it is not minuted down.

Q. From Memory or Judgment can you estimate?

A. At this Distance of Time I really cannot.

Q. Can you tell who first made the Signal for Battle, the Vice Admiral of the Red or the Commander in Chief?

A. I did not see the Signal for Battle till I had passed the Line of Fire of the Enemy.

Q. Do you judge that a Flag Officer commanding a Division, has a Right to make any Signal in Contradiction to those made by the Commander in Chief; such as calling in Ships from Chace, without the Commander in Chief first makes the Signal for it?

A. I should imagine not.

Q. You have stated, that the Red Division was to Windward of the Rear of the Enemy, after the Red Division had tacked—If the Admiral,

when he was standing towards the Enemy, had continued the Signal for Battle out, could not the Red Division, from the Situation they were in, have bore down and attacked the Enemy?

A. As we were to Windward, we certainly could have edged down; the Point is, whether it would have been proper for us in the Situation the Fleet then were.

Q. Was any Part of the Red Division dismasted?

A. Not that I know of.

Q. Was any Part of the Fleet dismasted?

A. Not that I observed.

Q. Was any Part of the Red Division otherwise disabled to your Knowledge at that Time?

A. The *Shrewsbury* was; as to what Damages the other Ships received I cannot tell.

Q. Do you mean that the *Shrewsbury* was not fit to have gone into Action again immediately?

A. In Half an Hour she was fit for Action.

Q. I understood you gave an Account Yesterday of your wearing your Ship instantly in order to have renewed the Attack—What were the particular Damages the *Shrewsbury* received?

A. Would you have the Particulars?

Q. Some of the Principal?

A. The Main and Forespring Stays, Stays, Main Tacks, Topsail Ties, a great Part of the running

running Rigging, most of the Sails shot through in several Places, one Shot through the Main-mast, one Shot through the Rudder Head, one Shot through the Mainpiece of the Rudder, and several others.

Q. From the very brisk Fire that was kept up by the *British* Ships that engaged, have you not Reason to imagine, that the *French* received Damages in Proportion to those of the *British* Fleet?

A. I should imagine so.

Court asked,

Q. Did the Enemy appear to you to have been so much damaged in their Sails and Rigging as our Ships?

A. I thought not.

Prosecutor asked,

Q. Did you observe the Enemy when they broke up their Line, and began to form a new Line, with their Heads to the Southward, towards the *British* Fleet?

A. I did observe them; the *French* Fleet wore some Time about Half past Three, with their Heads to the Southward.

Q. If the Whole of the *British* Fleet had immediately wore, after passing the Rear of the Enemy's Line, instead of standing to a Distance, might not the Engagement have been immediately renewed, and the *French* prevented from forming in a new Line, with their Heads to the Southward, whether the *British* Fleet were in a Condition or not is not the Question?

A. It depended entirely upon the Condition the Fleet was in. I am summoned here to answer to Questions relative to the Action, particularly the 27th and 28th—I am ready to answer to any Question that shall be put to me—This is a Matter of Opinion—I would answer it if I could; but I do not look upon myself so much a Master of Naval Affairs as to answer that.

Court.

You may give your Opinion, or you may decline it, if you please.

Prosecutor.

If you have any Difficulty about answering it, I do not wish to press the Question.

Court asked,

Q. You said Yesterday you did immediately wear, as soon as you passed the Rear of the Enemy, to pursue the *French*; and that as soon as you had wore, you found you should throw yourself, and the Ships that were standing towards you, into Confusion; and you thought it proper to wear back again almost instantly.

A. Yes, I did say so.

Q. As most of the Questions that are asked here are Suppositions and Opinions, inform the Court whether, in your Opinion, if the *British* Fleet, when they came out of Action, had received little or no Damage, the Commander in Chief, Admiral *Keppel*, would not have renewed the Action immediately?

A. Most certainly he would.

Prosecutor asked,

Q. When you mention that the Ships would have been put into Confusion by your wearing in the *Shrewsbury*, do you mean to speak of the Ships of your own Division being in that Confusion?

A. No; I mean, if the *British* Ships that were come out of Action had wore again directly, and stood after the *French* Fleet, they would have thrown themselves, and those of the *English* Fleet which were coming up, into the greatest Confusion.

Q. When Ships in the Van tack before Ships astern of them, do not the leading Ships weather

the Ships that are following them, and does that put them in Confusion?

A. Ships in the Van tacking first generally keep their Wind; but in this Case two or three Things were to be considered,—the *British* Fleet that was astern, and the *French* Fleet. Would you go to Windward of them, and so fire through one another?—That is the Confusion I mean,—A Ship in the Van may always weather a Ship astern.

Court asked,

Q. Supposing the Ships in the Van had attempted to tack, and missed Stays, would not that have put those astern of them into great Confusion?

A. Certainly it would.

Prosecutor asked,

Q. Did the Red Division bear down into the Admiral's Wake that Afternoon when the Signal for the Line of Battle was flying, and the Fleet on the Starboard Tack?

A. At twenty Minutes after Three, the Admiral made a Signal to wear: At Half past Three, the Admiral made the Signal to bear down into his Wake. The *French* Fleet having, some Minutes before that, wore with their Heads to the South West, standing in a Line of Battle, the Admiral made the Signal to form the Line of Battle ahead a Cable's Length asunder, which was obeyed by the Red Division.

Q. Did not the Red Division first go down astern of the Admiral?

A. The Vice-Admiral of the Red made sail ahead upon the Starboard Tack, which I found afterwards was in consequence of Orders from Admiral *Keppel* to lead the Fleet on that Tack.

Q. During the Night of the 27th, were any Observations made of the *French* Fleet on board the *Shrewsbury*?

A. During the whole Night?

Q. Yes.

A. During the whole Night we were under a very easy Sail in a Line of Battle a Cable's Length astern of Sir *Robert Harland*, the *French* Fleet being to Leeward of us.

Q. Did you observe the *French* make any Signals during that Night?

A. I observed none myself, but was told about Eleven o'Clock, that there were some Rockets fired, but did not see them myself, though I was on Deck the whole Night.

Q. Was it observed on board the *Shrewsbury* when they bore away?

A. No.

Q. Do you remember what Time you lost Sight of them in the Night?

A. I do not; it was dark Weather.

Q. How many were in Sight in the Morning?

A. At Four o'Clock in the Morning I saw Three Sail of the *French* Fleet bearing S. E. by E. five or six Miles Distance; they bore away, set their Studsails, and made all the Sail they could.

Q. Were no more of the *French* Fleet seen on board the *Shrewsbury*?

A. At Five o'Clock one of the Lieutenants from the Maintopmast-head saw Nine or Ten Sail bearing S. E. by E. six or seven Leagues.

Q. Was any Signal made to the Admiral by your Ship, or any other of the Red Division, of seeing those Ships?

A. The *Shrewsbury* made none, as I saw several Pendants flying as Signals for several Ships to chase from the Admiral.

Q. Did any other Ships of the Red Division make the Signal of seeing those Ships?

A. I observed none; but Sir Robert Harland, and Part of the Red Division, had set Topgallant-fails, and bore away.

Prosecutor has done with the Witness.

Court asked,

Q. Did you see the *British* Fleet run away, or have the Appearance of a Flight, or behave in such a Manner as to give the *French* Admiral a Pretence to claim the Victory, and that the *French* Fleet pursued the *British* Fleet, and offered it Battle, on the 27th of July?

A. Most assuredly at no Period of that Time had ever the *British* Fleet any Appearance of running away.

Q. Then did you see the Honour of the *British* Navy tarnished on the 27th or 28th of July?

A. I did not, in any Respect.

Q. In the Morning of the 28th, when you found the *French* Fleet were gone away, did not you look upon it that they ran away from the *British* Fleet?

A. Certainly.

Prisoner asked,

Q. Could the Ships, in the close Order they were on coming out of Action, tack clear of each other, till they had stood on to increase their Distance?

A. It was absolutely necessary to stand on.

Q. Was it by means of the Red Division having stood on, that they were able to lay up to Windward of the *French* Fleet?

A. Certainly.

Q. Did I use every Means as an Officer to get up with, and bring the *French* Fleet to Battle, from the 24th to the 27th of July?

A. You did, by carrying proper Sail both by Night and Day.

Q. If I had pursued the *French* in a Line of Battle, would it have been possible to have preserved our Nearests to them?

A. You could not.

Q. Was it not, every one of the Days before mentioned, in the Power of the *French* to have brought on Action with the *British* Fleet?

A. Certainly, they being always to Windward.

Q. If I had formed my Line of Battle the Morning of the 27th, do you imagine I could have brought the *French* Fleet to Battle during that Day?

A. No; because, if the Admiral had made the Signal for the Line of Battle, and the weather-moist Ships had bore down to the Wake of the leewardmost Ships, we should have been near five Leagues to Leeward of the Center of the *French* Fleet.

Q. At Eleven o'Clock, or when the *French* were so near, and the Change of Wind gave Advantage to the *British* Fleet, must not the *French* Admiral have given up some of his Rear Ships, if he had not risked Battle with his Center of the Fleet?

A. Most certainly.

Q. Did it ever appear to you, in the Afternoon of the 27th, that I had given over my Intention of renewing the Fight, if I could have formed a Line in Time to have done it?

A. Certainly at no Time did I think so; because the Signal for the Line of Battle was out, even the whole Night, the *Shrewsbury* keeping her Station in the Line all Night.

Q. You are an Officer of long Experience and Service; I shall therefore venture to ask, and desire you to inform the Court of any Instance, if you know any such, in which I negligently performed my Duty on the 27th or 28th of July?

A. I know of none. In every Respect the Admiral discharged his Duty, as far as I can be a Judge, as became a brave and gallant Officer.

Prisoner done with the Witness.

Withdrew.

Captain Joseph Peyton, of the *Cumberland*, sworn.

Not having heard the Charge, the same is read to him.

Prosecutor asks,

Q. Do you recollect the Time you first saw the *French* Fleet on the 27th in the Morning?

A. Some Time before Seven o'Clock in the Morning, according to my Memory; but it must have been earlier.

Q. How were they then standing?

A. They were then standing upon the Larboard Tack, the Wind westerly, with their Heads to the Northward.

Q. Did you see them change their Tack?

A. About Eight, or Half after Eight, I cannot be exact as to Time, they wore, and formed their Line as they wore on the other Tack, leading large.

Q. Did they wear successively in each other's Wake, as you observed, and so form the Line?

A. They did.

Q. After they had all wore, did they appear to you to be in a Line?

A. Yes, I think so, as far as I could judge of them at that Distance.

Q. How long did they continue upon that Tack?

A. I think till about Ten o'Clock. I beg there may be a little Latitude as to Time, for I cannot be exact.

Q. What did they do then?

A. They laid their Heads to the Northward again; they returned to the Larboard Tack.

Q. Can you recollect whether they tacked or wore then; or was it during the Squall, that you did not see them?

A. There was a thick Squall, but I cannot recollect whether they tacked or wore; it does not at present strike me that I did see them tack or wear.

Court asked,

Q. Did you lose Sight of them?

A. There was a Squall; but whether just at the Time they tacked or wore, I cannot be positive.

Q. Had you lost Sight of them at any Time between their being on the Starboard Tack and the Larboard Tack?

A. The Squall was such, that they were not wholly covered; I saw some Part of them; it covered them, generally speaking; but here and there we saw some of the Ships; and as the Squall passed on, then it covered others. It is difficult to describe the Squall passing.

Prosecutor asked,

Q. When you saw them again upon the Larboard Tack, did their Van appear to you to keep their Wind close, or to edge down to attack the *British* Fleet?

A. They appeared to me to keep their Wind, and the headmost Ships to croud Sail as much as they could carry.

Q. When you saw them wear the first Time, were they to Windward?

A. Yes.

Q. By their being to Windward, and by their wearing and leading large afterwards, when they might

might have tacked and kept their Wind, and afterwards changing their Tack, and attacking the *English*, do you consider those Motions as an Indication of their Intention to avoid coming to an Engagement, or of their Intention to engage?

A. About the Time they wore I had my Eye upon them, and I then thought that their Intentions were different from what they had shewn the several Days before, that we had been pursuing them; but when they came to the Larboard Tack, and crouded Sail, and kept their Wind close, which their headmost Ships that I saw did, I then thought that they had an Inclination to avoid an Action; and as I had it in my Idea for several Days before the 27th in the Morning, that their Fleet outailed ours, as a Fleet in a Body, it was rather a Confirmation to me, in my own Idea, that they did not mean to come to an Engagement; as they thought they could get off when they pleased.

Q. Did they continue to croud sail after the whole of them had got their Heads that Way; or did they shorten Sail, and engage the Fleet under their Topsails only, or their Topsails lowered on their Cap?

A. They stood a very little while on their Larboard Tack before (I cannot exactly say whether it was the three or four headmost Ships that bore down, but I was then astern of them), and they began firing upon the *Monarch*, as appeared to me, and from thence the Action began.

Q. If I understood you right, the Enemy edged down and fired upon the *Monarch*?

A. Yes.

Q. Did you happen to observe after that, whether they continued to range along the *British* Fleet with the crouded Sail you described, or whether they shortened Sail?

A. After the Firing began, which was very unexpected to me, what I saw of their Ships were under different Sail; some brought to, to fire at us, others continued under that Sort of Sail which would naturally keep Company with their Line, but not with any Appearance of crouding Sail after the Firing began.

Q. Was the Signal for engaging made first on board of the *Queen* or the *Victory*?

A. I cannot say.

Q. Whilst the Red Division was passing the Enemy, was you ahead or astern of the *Queen*?

A. I was upon the *Queen's* Weather-quarter.

Q. Was you at any Time obstructed in your Firing by other Ships coming in your Way, or was you in the Way of others?—Was there any firing over you?

A. The *Monarch* was before the *Cumberland's* Weather-beam, but no Obstruction to our firing. The Enemy passing astern of the *Monarch*, brought them open to us, and we fired as they presented themselves. I do not know of any Ship firing over the *Cumberland*.

Q. After the Red Division passed the Rear of the Enemy, when the Division tacked, did not they look up to Windward of the Rear of the Enemy?

A. Yes—I beg Pardon, what I am speaking of the Red Division, is of the *Cumberland* and the Ships that were near her; the *Queen*, for Instance, whom we followed very close. My Memory will not let me take in the whole Division. The *Cumberland* went to Windward, and I presume the other Ships did.

Q. Do you know that the whole Division did not tack and stand the same Way with the Admiral?

A. I do not know they did not; I believe they did.

Q. Did you observe the Admiral and the Center Division after they passed the last of the Enemy's Rear?

A. I remember to have seen the *Victory* after we had tacked and stood on the Larboard Tack. We cheered the Admiral as we passed by.

Q. Did you observe the Admiral and the Center Division afterwards wear?

A. I do not recollect in particular as to Time, but I have a general Idea that they wore, as well as the Van Division.

Q. After the Center Division had wore and stood the same Way as the Van Division, was the Van Division then ahead, and to the Windward of them, or how situated from them?

A. The Van Division for some Time bore down, and, according to my Memory, the Center Division did the same.

Q. During that Time, was the Van Division ahead of the Center Division, and to Windward withal?

A. I cannot say.

Q. After the Van Division had tacked or wore, did you make Sail on that Tack, or shorten Sail, or draw up to the Rear of the Enemy, or how?

A. Upon our bearing up, we neared the Enemy, and passed them to Windward, at about two Gun-shot, as near as I can judge; we then hauled our Wind upon the Starboard Tack.

Q. To what Distance do you judge the Center Division stood beyond the Rear of the Enemy, before they changed their Tack, at the Time they stood towards the Enemy again?

A. I cannot judge of the Distance.

Q. To what Distance do you reckon the Van Division stood before they tacked or wore?

A. By the best Recollection of Time I can make, the Firing ceased about Half past Twelve at Noon, and the Vice-Admiral of the Red tacked about One o'Clock.

Q. Do you remember the Time when the Signal for Battle was hauled down?

A. No.

Q. From the Situation you describe the Van Division to have been in, about two Gun-shot to Windward of the Rear of the Enemy, and the Center Division standing towards the Enemy, if the Signal for Battle had continued flying, and the Body of the Fleet had continued advancing towards the Enemy, did any Reason appear to you at that Time against re-attacking the Enemy?

A. That is Matter of Opinion; which I must decline giving, conceiving it to be contrary to the latter Part of my Oath, by which I am to speak nothing but the Truth; and Opinion is liable to Error.

Q. Did you take Notice when the last of the *British* Fleet came out of Action?

A. I cannot say I did.

Q. Did you take Notice of the Vice-Admiral of the Blue after he came out of Action?

A. I saw the Vice-Admiral of the Blue to Leeward of the Red Division; and, as it were, presented to the Van of the *French* Fleet, when drawing to their Starboard Tack.

The President having received a Note from Sir John Lockhart Ross, the last Witness, desiring Leave to correct a Mistake in Part of his Evidence, he was called in.

Captain Peyton, in the mean time, withdrew.

The Correction being made, Sir John Lockhart Ross was asked,

Q. "Were your Colours hoisted all Night of the 27th."

A. Yes, they were.

Sir John withdrew.

Captain

*Captain Peyton is called in again.**Prosecutor asked,*

Q. Did you observe the *French*, during that Afternoon, to continue to form in a new Line, with their Heads to the Southward?

A. Yes.

Q. Have you any Reason to think that the *French* Fleet did not suffer in Proportion to the *English* Fleet during the Engagement, considering the brisk Fire our Ships kept up?

A. They did not appear to me to have suffered so much in their Masts and Yards as our Ships had done. There was one, indeed, of their Ships that was more disabled in her Masts and Yards than any of ours.

Q. Did you observe any Ships dismasted on either Side?

A. No.

Q. Do you know of any Ship in the Red Division being disabled at that Time?

A. The *Monarch* had her Foretop-sail-yard carried away; but I do not recollect any thing of any other Ship very particularly.

Q. Do you remember seeing the Admiral when he laid his Head to the Southward again?

A. It does not strike me just now.

Q. Do you remember when you first took Notice of his being in that Situation?

A. I must have seen him as we were following him in the Van Division, to go ahead of him, but the particular Time I cannot say, it must have been the whole Time, I suppose.

Q. You have said that you observed the *French* begin to form a new Line with their Heads to the Southward; was not that standing towards the *British* Fleet?

A. Yes.

Q. Then did it appear to you by the Enemy's standing towards the *British* Fleet, and forming a new Line, that they shewed a Disposition to renew the Engagement, or to avoid it?

A. To renew it.

Q. If the next Question is considered by you as Matter of Opinion, I do not put it, I beg leave to state it to you.

If the Admiral with the Ships that were with him, and the Vice Admiral of the Red with his Division, had advanced upon the Enemy at the Time they were beginning to form a new Line, and attacked them, would it not have prevented their forming a new Line?

A. If you mean to ask—whether I would answer it as a Matter of Opinion, I say No, I decline answering to any Matter of Opinion.

Prosecutor asked,

Q. Did the Red Division bear down into the Admiral's Wake that Afternoon?

He had Leave to make use of Minutes taken by his Clerk at the Time, in Relation to Signals, from which, however, he said, he should only speak as to what came within his own Knowledge.

A. The Red Division bore down, but I do not remember bearing immediately into the Admiral's Wake.—There was a Signal to bear down.—To my Recollection the Van Division bore down, and went ahead of the Admiral, and took their Station upon the Starboard Tack.

Q. Do you remember any Notice being taken of the *French* Fleet in the Night?

A. Their Lights were seen, and they fired some Rockets about Eleven o'Clock.

Q. Did you perceive them to bear away in the Night?

A. No.

Q. How many were in Sight in the Morning from the *Cumberland*?

A. Three.

Q. Do you know of any Signal being made from any Ship of a greater Number being in Sight?

A. By the *Queen*, and by the *Monarch*, there was the usual Signal made of seeing a Fleet from those Ships.

Court asked,

Q. What was the Signal?

A. The Topgallant-sheets flying, and the Yards hoisted up.

Q. What became of the Topmasts—were they lowered down?

A. I have no Idea about it.

The Thirteenth Article of the Sailing and Fighting Instructions, under the Head of Signals by Day, was then read.

Q. You do not remember such Signals being made as is mentioned in the foregoing Article?

A. I do not.

Q. Did you see them?

A. No.

Q. Nor from your own Ship?

A. No; I sent People up to the Mast-head in the Morning on Purpose, but could not see them.

Prosecutor asked,

Q. Did the *British* Fleet chase those Three Ships you have mentioned, or the Fleet which was seen?

A. I think we stood towards them some little Time, but I am not clear in my Recollection how long.

Q. What Sort of Weather was it that Morning?

A. Moderate Weather.

Q. Do you recollect how the Wind was?

A. Not very well—It was to the Northward of the West, I believe.

Q. With that Wind, and moderate Weather, do you consider *Ushant* as a Lee-Shore dangerous to approach, being Summer-time, and short Nights?

A. The Question answers itself—there can be no Danger in moderate Weather, undoubtedly.

*Prosecutor has done with the Witnesses.**Court asked,*

Q. The following Question is not asked as Matter of Opinion, because you have declared before you would not answer to Matter of Opinion.—Did you see the *British* Fleet run away, or have the Appearance of a Flight, or behave in such a Manner as to give the *French* Admiral Pretence to claim a Victory, and that the *French* Admiral pursued it with his Fleet, and offered it Battle.

A. There are many Questions upon one Range.

Q. They shall be asked singly if you please.—Did you see the *British* Fleet run away?

A. No.

Q. Did you see the *British* Fleet have the Appearance of a Flight that Day?

A. No.

Q. Did you see the *French* Admiral pursue it with his Fleet and offer it Battle?

A. The *French* Admiral with his Fleet followed the Fleet of *England* and offered it Battle undoubtedly.

Q. Did you see the Honour of the *British* Navy tarnished on the 27th or 28th of July?

A. No, by no Means in the World.

Q. Then did you see the *French* Fleet (which you say followed the *British* Fleet and offered it Battle) the next Morning the 28th, or were they not run away?

A. Yes, they were run away.

Q. You say that the *French* Fleet offered the *English* Fleet Battle, when they formed the Line upon the Starboard Tack; if they had inclined to

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renew

renew the Action again as you have said, could they not have fetched within Pistol-shot of the *British* Fleet, and engaged if they had pleased?

A. I cannot judge how near they could have fetched to the *English* Fleet; my Words were, "offered Battle," I mean, they ranged themselves at such a Distance to Leeward as to admit of the *English* Fleet attacking them, whenever the Commander of that Fleet thought it proper.

Q. Please to give an Account of the material Damages your Ship received in the Masts and Sails?

A. They were so trifling as not to be material. There was one Shot through the Bowprit, and the Rigging and Sails were cut.

Prisoner asked,

Q. At the Time you describe the *French* Fleet to have offered the *English* Fleet Battle, had the *English* Admiral then been able to form his line.

A. The Line was not formed till very late in the Evening.

Q. Had not the Signal for the Line been flying the whole Afternoon—I mean before and after standing upon the Starboard Tack?

A. Yes, from Two o'Clock.

Q. Did it appear to you that I ever had given over Intention of renewing the Fight in the Afternoon, if I could have formed my Line in Time to have done it?

A. As to the Admiral's Intention I could form no Judgment; but from the Dispositions of the Ships and their Movements, there was full Endeavour to form the Line from the Time the Signal was made, as far as the disabled Ships would allow it.

Q. Did I use every Means, as an Officer, to get up with and bring the *French* to Battle, from the 24th to the 27th of July?

A. If the Admiral means, that I saw he did not use the Means, I answer No; but as to the other Part of the Question, it is not for me to answer to Things I did not see.

Q. If I had pursued the *French* Fleet in a Line of Battle, would it have been possible to have preserved our Nearests to them?

A. I cannot judge.

Q. Was it not in the Power of the *French* every one of the preceding Days to have brought on Action with the *English* Fleet?

A. At some Part of the Time there was too much Wind for Fleets to wish to come to Action, but as they were to Windward after the 23d, they might have taken their own Time to come to Action.

Q. You have expressed their Mode of wearing very intelligibly—when they were upon the Starboard Tack, in the Morning about Nine o'Clock, whether they did keep their Wind and carry their usual Press of Sail from the *English* Fleet?

A. I think I said in my former Answer they wore in Succession, or Words to that Effect, and that they formed their Line steering large, they did not keep their Wind of course.

Q. Then I understand, that after they were upon the Starboard Tack, they never again went upon a Wind?

A. They steered large,—it was a very short Time—they wore about Half an Hour after Eight, and it was about Ten when the *English* Fleet tacked.—Upon the *English* Fleet tacking, the *French* Fleet got upon the other Tack, but whilst they were upon the Starboard tack, they were steering large as far as I saw, and not pressing Sail upon the *English* Fleet, but steering rather meaning to come near, as my Idea was, to us.

Q. Then if that steering large was to allow the *English* Fleet to fight them when the *English* Fleet lay up for their Rear, if they had intended Action, would they not have shortened Sail for the *British* Fleet to have ranged up with them upon the same Tack, and not get upon the contrary Tack:—This, I apprehend, is a Question to an Officer, asked by an Officer.

A. I have mentioned in a former Part of my Evidence, that the *French* Fleet when they came to their Larboard Tack kept their Wind, and at that time I had an Idea that they did not intend to come to Action.

Q. What Number of the Ships of the Red Division were with their Admiral when he tacked in the Rear of the Enemy, after having passed them?

A. I believe they were all there; I have no Idea of any Ship being left behind; the *Monarch* continued on, and she was the most disabled.

Q. Are you sure the *Monarch*?

A. I am not sure; I spoke to my Belief.

Q. Was the *Duke* there?

A. She was not in my Eye—she is not in my Remembrance; but I have no Idea why she was not there.

Q. Do you recollect what Time it was you cheered the Admiral in passing?

A. I think it must have been between One and Two o'Clock.

Q. Was the Admiral upon the Starboard or the Larboard Tack at that Time?

A. The Admiral was upon the Starboard Tack—the Ships were then crossing each other pretty near.

Q. Do you recollect whether the Admiral had the Signal up to wear at that Time?

A. I think not.

Q. Does it appear upon your Minutes?

A. There is no Minute of it at all.

Q. Was the Fleet on the Starboard Tack, standing to the Southward, at the Time you state the *French* Fleet to be Two Gun Shot to Leeward of you?

A. The *English* Fleet, that is the Van, and what I recollect of the Center, were bearing down to Leeward, and drawing towards the Starboard Tack—the *French* to Leeward of the Van, and presented themselves as it were to each other—they were upon the Larboard Bow.

Q. Where was the Vice-Admiral of the Blue, at this Time, and his Division?

A. I cannot exactly trace where the Vice-Admiral of the Blue and his Division were at this Time.

Q. When the *French* first formed their Line of Battle on the Starboard Tack, if they had set a good deal of Sail, might they not have presently come up with the *English* Rear—and do you recollect whether they did not come up to Leeward under Topsails?

A. If they had made all the Sail they could, undoubtedly. As to their coming up under their Topsails, some had their Fore sails set, their Stay sails and Jibs—and so, I suppose, according to their different Goings, they made different Sails.

Q. With crippled Ships that had been in Action, is it safe to go down upon a Lee shore on an Enemy's Coast, trusting to find good Weather when you got there?

A. I do not know what is meant by a Lee shore.

Q. I mean by a Lee shore, to be blown upon the Land, to entangle yourself—to go in Sight of an Enemy's Coast, where the Wind is fair to carry the Enemy into Port with Safety.

A. In this Instance, I do not know there was any Lee-shore—we were so far from the Land.

Q. Can crippled Ships go in with any Land, as a Fleet that is not crippled can?

A. Crippled Ships cannot go in with any Land, while Ships that are not crippled may clear the Land.

Q. How far on the 28th were you from *Ushant*, and how did it bear?

A. I have not my Journal or the Log-book with me.

Q. You do not know how far we were from the Land of *Ushant*?

A. No.

Court asked,

Q. You had some Judgment yourself of the Distance at that Time.

A. I had an Idea of towards Forty Leagues.

Q. Did you imagine at that Time, the 28th, the *French* Fleet was at such a Distance, that you would not have been able to come up with them before they got into *Brest*?

A. I have mentioned in the former Part of my Evidence, that from all Circumstances I thought the *French* Fleet sailed better than we did; and from thence, as there were crippled Ships besides, more than there were in the other Circumstance, there was still less Likelihood of coming up with them.

Q. But if they had come up with them, was not there Danger from a Lee Shore for the crippled Ships?

A. In bad Weather, undoubtedly.

Q. Can you recollect how long Time the

French Fleet offered the *English* Battle, as it appeared to you?

A. The greater Part of the Afternoon of the 27th.—I cannot be exact as to Time.

Q. Did it appear to you that the whole of the *English* Fleet was at that Time in a Condition and Situation to give them Battle?

A. I have mentioned, that the *English* Fleet was not in a Line till towards the Evening, and therefore not in a proper State.

Q. Were they in a Condition?

A. I did not see but that the *English* Fleet was in a Condition to give them Battle, or take it, generally speaking; there were Six or Seven Ships that seemed to be repairing themselves, of course they could not come into the Line, and were not in a Condition to come into Action.

Q. During the Course of the Evidence, and the Questions that were asked you, you said that some Parts of the Time the Weather was such, as to be improper for the *French* to come down to engage the *English* that were to Leeward. Had you commanded a Squadron of *British* Ships, and was to Windward in the same Manner the *French* were, and the *French* Fleet to Leeward, should you have hesitated one Moment in going down to engage them, as a *British* Officer?

A. It seems to me to be a Matter of Opinion.—As long as Two Fleets could be brought together to engage, it would have been my Duty to be sure, to have gone down to engage.

Witness withdrew.

Court then adjourned, being past Three o'Clock, till To-morrow at Ten o'Clock.

E I G H T E E N T H D A Y.

W E D N E S D A Y, the 27th Day of JANUARY, 1779.

COURT met according to Adjournment. The Prisoner was brought in, and Audience admitted.

Captain Evelyn Sutton, of the Proserpine, sworn.

Prosecutor asked,

Q. Was you stationed in the Night of the 23d July, to watch the Motions of the *French* Fleet?

A. The Charge mentions only the 27th and 28th.—I came prepared only for those Days.

Prosecutor observes, he shall not ask him any more Questions, excepting to the Time he has mentioned, and afterwards for the 27th and 28th.

The Question is repeated.

A. I was.

Q. What Orders did you receive for that Purpose?

A. To keep between the *French* Fleet and the *English* Fleet.

After some Observations between the Parties, the Court, and the Witness, whether to ask the Witness any Questions prior to Dates in the Charge, he having said, he did not come prepared to answer to any Thing before the Days therein mentioned; the Prisoner observed, that if it is the Object of the Prosecutor to know from the Witness, if the Wind was fair for the French Fleet to go into Brest

on the 23d at Night, he is ready to admit it was.

Prosecutor asked,

Q. Did you receive Orders in the Afternoon of the 27th, to carry a Message to any Part of the Fleet from the Admiral?

A. I did.

Q. At what Time was the first Order you received?

A. Between Two and Three.

Q. What was the Order?

A. To desire Sir *Robert Harland* would keep the Position he was in, and lead on the same Tack.

Q. What was the next Message, and at what Time?

A. To form aftern of the *Victory*. Both Orders were given at the same Time.

Court asked,

Q. Then you put only one into Execution?

A. No, only the last.

Prosecutor asked,

Q. Had you any other Order or Message from the Admiral that Afternoon?

A. No.

Q. What Time was it you delivered that Message to the *Queen*?

A. About Three o'Clock, I cannot say exactly to the Time.

Q. Whereabouts was the Red Division at this Time, with respect to the Rear of the Enemy's Fleet?

A. A few of them were to Windward, not the whole Division.

Q. What

Q. What did that Division do in consequence of that Message, did you observe them to bear down?

A. They were bearing down when I hailed the Vice-Admiral Sir Robert Harland.

Q. And did they bear down and form astern of the Admiral, agreeable to the Directions you carried?

A. I think they did.

Q. Was that in the Line of Battle the Station of the Vice-Admiral of the Red, or of the Vice-Admiral of the Blue?

A. The Vice-Admiral of the Blue.

Prosecutor has done with the Witness.

Prisoner asked,

Q. When you first came on board of the *Victory*, did I not give you Orders to go to Sir Robert Harland, with Orders to him, to lead upon the Larboard Tack?

A. Yes.

Q. Was the *Victory* then upon the Larboard Tack?

A. She was.

Q. Then before you were able to get away in consequence of my Orders, I thought it proper to wear to the Southward; did I wear to the Southward, and then give the second Orders for Sir Robert Harland to form astern of me?

A. I went away with those Orders, and the *Victory* wore immediately after.

Prisoner has done with the Witness.

Withdrew.

Constantine John Lord Mulgrave,
sworn.

His Lordship has the Court's leave to refer to his Minutes.

Prosecutor asked,

Q. When did you see the *French* Fleet first in the Morning of the 27th of July?

A. I do not recollect the Time.

Q. At the Time you did take Notice of them, do you recollect which Way they were standing?

A. I do not—I wish to be understood, when I say I do not, that I could, upon a loose Recollection; but I would wish, in the Evidence I give, to mention only those Things that dwell certainly upon my Mind, and not to mention any Thing that I am not quite clear of—My Attention was chiefly taken up with my own Ship, and observing the Motions, and watching the Signals of the Admiral.

Q. Did your Lordship, any Part of the Morning before the Action began, observe the *French* Fleet to tack, or wear, or which Tack they were upon?

A. The Weather was hazy, and the *French* Fleet at a considerable Distance from me—I therefore cannot give an Account with that Accuracy with which I should wish that every Answer I give as an Evidence should be attended—I certainly did see them tack, but I could not be so precise in Time, or other Circumstances of it, as I think ought to have any Weight as an Evidence—There were other Ships much nearer than me.

Q. Does it occur to your Recollection, whether they struck you at that Time to be in a Line?

A. They appeared to me to be in a Line; but when Ships are at a great Distance, how far a Line may be regular or no, or how far from different Points of View, one may be deceived in that, I cannot take upon me to say at so great a Di-

stance, and in such Weather, as I saw them in that Morning.

Q. With what Part of the *French* Fleet did your Lordship begin to engage?

A. I could be very accurate as to the Time, I believe; but I did not really attend much to the Circumstance of what Part of the Fleet I began to engage with—it was many Ships ahead of the *French* Admiral.—The Court will easily believe I had enough to do at that Time to attend to my own Ship, and to watch the Admiral's Motions to be ready to obey his Commands immediately.—I was fired upon by several of the *French* Ships ahead of the Admiral, before I came near the Admiral.

Q. Did it appear to your Lordship, that the *French* Fleet edged down upon the *British* Fleet as they engaged?

A. It did appear so to me—I must explain myself—My Idea was from the Position of the Ships I passed; mine being almost close upon the Wind, and our Broadfides lying to each other, that I think they must have edged down.

Court asked,

Q. Does your Lordship recollect whether they edged down before the Engagement began?

A. I was much more attentive to the Motions of the Admiral, in whose Division I was, than to those of the Enemy; because it was from thence I was to take my Conduct, and not from any Observations that I made upon the Enemy till I was in Action.

Prosecutor asked,

Q. As I believe the *Courageux* was in general engaged as close, and, in some Parts of the Action, closer than any other Ship in the Fleet, I should be glad to know if it came within your Observation, whether the *French* Fleet engaged under a more or less Sail than the *British* Fleet?

A. I hope the Court will forgive me, if I submit a Wish of mine to them, that all Questions that are put to me may relate plainly to the Fact that I am asked, and not contain any introductory Matter, that I may appear to give an Answer to, when I do not mean it.—I shall very much object to give an Answer about who engaged nearer, and who did not, and every Expression of that Sort.—Every Information it is my Wish to give, but I would not be understood to give an Answer to what is contained in the introductory Part of the Question.

Q. I only introduced the Question, as it carried with it the Probability of your Lordship's being most able to speak to it.

If it happened to be in your Lordship's Observation to say, whether the Sail they carried was more or less than the Sail the *British* Fleet carried during the Action?

A. The *French* Fleet appeared to me to carry a great deal of Sail, some more than others, as must always be the Case in a Fleet that keep Company together.

Q. Did you observe that any of them carried more than their Topsails and Foresail, during the Action, and whether many of them had only their Topsails, and some of them lowered, as your Lordship ranged along them?

A. I did not observe any of them with their Topsails lowered, I cannot speak positively upon my Recollection whether they did carry more than their Topsails and Foresails, but I think I remember some of them with their Mainfairs, I think I do, but I would not be understood to speak positively. The Impression at the Time was, that they carried a great deal of Sail, and

had a fresh Way through the Water, some of them appeared attentive to their Admirals, and to carry such Sail as to keep in a proper Situation by them.

Q. Do you remember what Sail the *French* Admiral himself engaged under?

A. I did not—At the Time I saw him, I had not Leisure to make very accurate Observations of what Sail he was under.

Q. Can you say who first made the Signal for engaging, the Vice-Admiral of the Red, or the Commander in Chief?

A. I cannot—From the Moment I saw the Firing, my Eyes were turned to the Admiral's Flag, and there they were fixed till he made the Signal—By fixed, I do not mean that I never looked off, but my sole Attention out of my Ship was directed to the Admiral.

Q. When the *Victory* passed the sternmost Ships of the Enemy's Line, in what Situation was you then with respect to the *Victory*?

A. I do not know the precise Time the *Victory* passed the *French* Fleet—I had passed before, and from the Time I passed I was endeavouring to put the Ship I commanded in a Situation to obey any further Orders. I was ahead of the Admiral certainly.

Q. Can you speak to the Time and the Distance the Admiral stood beyond the Rear of the Enemy before he wore?

A. I have before said I do not know the precise Time the Admiral had passed the Rear of the Enemy. I can tell the Time I had passed them, and I can tell the Time the Admiral did wear,—at least that he made the Signal to wear, if that will answer the Question.

Q. Please to mention the Time?

A. That there may be no Mistake in the Time, I will state the Comparison, and the Intervals will, I believe, shew the Time, and reconcile it with any other Account.—The Watch that my Minutes were taken by was compared with mine, and it was a Quarter of an Hour slower than mine.—By this Watch it was Forty Minutes after Twelve when I had passed the Enemy—it was Fifteen Minutes past Eleven by that Watch when the *French* began firing.—It was Twenty Minutes past Eleven when the Admiral hoisted the red Flag at the Foretopmast-head.—The Admiral made the Signal to wear at Eighteen Minutes past One; it appeared to me a very short Time, for I had not been able to get the Ship I commanded in a Situation to wear then.

Q. Do you remember what Sail the *Victory* had set?

A. I remember before I began to fire, when I passed the *Victory*.

Q. I mean after she had passed the Enemy's Rear?

A. I do not.

Q. Did you estimate the Distance the *Victory* was from the Rear of the Enemy when she made the Signal for wearing?

A. I can describe the Distance no other Way than by the Date I have given; at Forty Minutes past Twelve I saw the *Victory* engaged when I had passed the Enemy; at Eighteen Minutes past One the Signal was made to wear.—What Part of the Time between Forty Minutes past Twelve and Eighteen Minutes past One, the *Victory* was in Action, I do not know.—I speak by the Watch by which the Minutes were taken.

Q. Did you take Notice of the Motions and Situation of the Red Division?

A. At about One the *Queen*, with the *Cumberland*, and some others of the Red Division, passed

me standing to the Northward upon the other Tack.—I was still on the Starboard Tack repairing my Damages, and they passed me upon the Larboard Tack with a good deal of Sail, having tacked before; it was about One, or a Quarter of an Hour at least, I think, before the Signal was made to wear.—The *Monarch*, one of the Red Division, was at that Time lying disabled with her Foretopmast-yard down just to Leeward of me. By that Time, I mean when the Signal was made to wear; that was the Time I took Notice of it, because of the Signal that was made to wear.

Q. Did you observe the Red Division after that Time when they shortened Sail?

A. I did not.

Q. Though your Lordship did not take Notice of them when they shortened Sail, did you see them after they had shortened Sail?

A. I never took Notice of them till they had passed me to take their Station in the Line in the Evening.

Q. Did you observe when the Signal for engaging was hauled down?

A. I did; it was at Forty-one Minutes past One.

Q. Was that after the Admiral had wore and laid his Head towards the Enemy?

A. The Admiral was upon the Larboard Tack, when the Signal for engaging was hauled down at Forty-one Minutes past One.

Q. Was it observed by you, or on board your Ship, when the *French* broke up their Line and began to stand to the Southward?

A. I cannot answer that Question; I observed from my Situation Part of the *French* Fleet when they were standing to the Southward, because it related to my Situation; but when they began to stand to the Southward, or when the Line was broke, I do not know, I was otherwise employed.

Q. What Time was it when your Lordship did observe them lying with their Heads to the Southward?

A. It was sometime before, but the Time I observed it particularly was at Twenty-five Minutes past Two, when I hauled my Wind, and set my Sail upon the Larboard Tack.

Q. Did your Lordship happen to take Notice when the last of our Ships came out of the Action?

A. I did not.

Q. From the brisk Fire that was kept up during the Engagement on the Part of our Ships, does your Lordship believe that the *French* did not suffer in Proportion to the *English* upon the whole?

A. I desire not to answer to any Questions of Opinion or Conjecture.

Q. Did you see any of the Ships of our Fleet dismasted?

A. I saw the *Foudroyant's* Mizentopmast gone, but I did not see any lower Masts gone.

Q. You have stated that at Twenty-five Minutes past Two, the *French* Fleet were standing towards the *British* Fleet, standing to the Southward?

A. I did not say the *French* Fleet, I said some of the *French* Ships.

Q. Some of the *French* Ships standing towards the *British* Fleet?

A. I did not say standing towards the *British* Fleet.

Q. Then as they were standing to the Southward, was not that towards the *British* Fleet?

A. They were standing towards some of the disabled

disabled Ships—When I hauled my Wind, I about looked up for them—I had been to Leeward of all the disabled Ships.

Q. Can your Lordship mention what those disabled Ships were the *French* were standing up to?

A. The *Egmont*, *Ramillies*, *Robust*, and *Sandwich*; I think I could not be mistaken; the *Ramillies* was the Leewardmost; I had passed close to her, and hailed her.

Q. By your Lordship's Account at this Time, the Admiral and Vice-Admiral of the Red were standing on their Larboard Tacks towards the *French*?

A. I did not mention the Vice-Admiral of the Red, for I did not attend to him. The Admiral was standing upon the Larboard Tack, but I have stated I believe, that I took no further Notice of the Vice-Admiral of the Red till the Evening; I do not mean to say it was not so, but I did not observe it.

Q. Whilst the *French* Fleet, or Part of them, which your Lordship has mentioned, were standing to the Southward, and the *British* Fleet standing to the Northward, were they standing towards each other, or wide of each other, or how?

A. The *English* Fleet were to Windward of the other, for I was working up to Windward to get into my Station, and I just looked up for the headmost *French* Ships. The *French* Ships appeared to me to be standing for our Four disabled Ships which I have mentioned. I am the more confident in this, because, at about Five Minutes past Three, I see by the Note that I took of the Ships being still there—I was uneasy for those Ships, and observed, that if the Signal for the Line had not been flying, I should have thought it my Duty to join them. I only state this to the Court as descriptive of the Situation at that Moment.

Q. From the Situation your Lordship has described the two Fleets to be in, did the *British* Fleet wear and stand the contrary, or the *French* wear and stand the contrary Way first?

A. I could wish to answer those Questions with respect to the different Tacks they were upon, and not in any Expressions that might involve an Opinion. The *French* Ships I mention I just looked up for at that Time, were standing on the Starboard Tack—the Admiral was at that Time on the Larboard Tack—and at Ten Minutes past Three made the Signal to wear, to lay his Head upon the Starboard Tack.

Q. Did both Fleets continue upon that Tack the rest of the Afternoon—I mean the Starboard Tack?

A. The Admiral did, with the Body of the Fleet, and the *French* also, as far as I saw.

Q. Did your Lordship observe the *French* Fleet begin to form a Line at the Time you describe they were a little under your Lee, when you were upon the Larboard Tack?

A. From the Time that the Admiral wore, my Attention was solely engaged to work my own Ship in such a Way, as to get the most expeditiously into my Station ahead of the Admiral; till I was in my Station, I made no further Remarks on the Enemy.

Q. Did you take Notice of the Red Division coming into the Admiral's Wake that Afternoon?

A. I did not.

Q. After you got into your Station, what Observations do you recollect to have made relative to the *French* Fleet then?

A. In the Circumstances I am going to mention, I cannot pretend to fix accurate Periods of Time—because, as it was of progressive Motions,

they only struck me in the gross. I tacked in my Station, with the Admiral's Mafts in one, about Half after Five—I think after the *French* Fleet were forming a Line to Leeward. The greatest Part of them appeared to me to be nearly altern of the Ships formed in the Admiral's Line, and they appeared to me to be forming their Line one by one to Leeward of that Body. The Admiral's Line was, I think, close at a Cable's Length. The *French* Line appeared, as well as I could judge at that Distance, to be from Three Cables Length to Half a Mile asunder. I do not pretend to describe that Distance, but I think not nearer than Three Cables Length asunder—but I do not think they could be further than Half a Mile—that is, Part of the Time in the Evening after the Van had got ahead of me, and the Admiral's Division as far as I could see in a Line ahead were formed. The Second Ship of the *French* Line was very nearly upon my Beam, for I could see the Quarter Galleries and the whole Broadside, but no Part of the Stern—but I think she was rather abaft my Beam. The Distance between the two Lines was between Two and Three Miles—I cannot speak to that with Accuracy, because People may differ in their Opinions as to Distances.

Q. At the Time your Lordship was on the Larboard Tack, and that you observed some of the *French* Ships with their Heads towards the disabled Ships, did you happen to notice any of the *French* Ships firing upon one of our Ships that was left altern, then or at any Time that Afternoon?

A. I did not see any Firing then.

Q. Did you observe what Sail the *Victory* carried that Afternoon when she was standing to the Southward?

A. I did not—I was only attentive to keep my own Distance—I did not make any particular Observation upon the Sail carried.

Q. In the Night of the 27th was it observed on board your Ship, that any Signals were made in the *French* Fleet?

A. Not so accurately as to make a Note of it as Signals, but we thought we saw some Rockets between Ten and Eleven. It was a Matter of Conversation and Opinion, but not with that Precision that I should have thought myself authorized to minute it down as a Signal I observed. I thought myself at the Time that it was a Signal.

Q. Was it observed on board the *Courageux* when the *French* Fleet bore away in the Night?

A. No.

Q. Was there any Signal made by the Admiral in the Night for altering the Course?

A. I saw none.

Q. What Part of the *French* Fleet was in Sight the next Morning?

A. I saw Three strange Ships, and I saw the Signal made for a Fleet by Two of our own Ships, I think the *Monarch* and the *Queen*.

Q. Did you take those Three strange Ships to be *French* Ships of War?

A. I suppose so—I saw no Colours.

Q. Did you suppose them to be Line of Battle Ships?

A. I formed no Judgment about them.

Q. At what Distance might they be from the *British* Fleet?

A. I do not at all know.

Q. Which Way did they stand?

A. I do not remember—I did not observe particularly. The Ship I commanded was not in a Condition likely to have her Signal thrown out to chace, and therefore I did not attend to them.

Q. Do you remember how the Wind was that Morning?

A. I

A. I believe West.

Q. What Kind of Weather do you remember it was?

A. Moderate Weather, and rather hazey; there was a Swell.

Q. Can you speak to the Latitude by Reckoning that Day, the 28th?

A. The Latitude $48^{\circ} 16'$ —*Ushant* bore North— 79° East—Distance 74 Miles, by the Reckoning by which I went in the Ship.

Prosecutor submitted to Lord Mulgrave, whether he considers Ushant as a dangerous Lee-shore, with the Wind at West, moderate Weather, and Summer-time; but his Lordship declined giving an Answer, considering it a Question of Pilotage, and a Matter which the Court are fully competent to judge of.

Prosecutor has no further Questions to ask his Lordship.

A Member of the Court.

Q. To your Knowledge and Observation, did Admiral Keppel negligently perform the Duty imposed on him on the 27th or 28th of July?

A. I have taken an Oath to answer the Truth to all Questions—I look upon Opinions to be Matters liable to Error—I have answered every Fact that has come within my Knowledge, as distinctly as I could—I hope the Court will not press upon me to give my Opinions; I have always thought that the Opinions and Thoughts of Individuals were sacred; I have declined to my most intimate Friends giving any Opinion upon this Case; the Court, who are to form their Opinions upon the Evidence, take an Oath not to divulge each other's Opinions. I hope the Justice, Candour, and Reason of the Court will extend that Protection to me, which the Law has given to them, and that I shall not be called upon to give any Opinion. The Court are to judge of the Facts before them, and I should think myself in a most disagreeable Situation, as a Witness, if I am to be called to answer upon my Oath to that which is Matter of Opinion; and perhaps, after giving it To-day, at another Time I may alter my Opinion, and think it not a just one. The Facts I can speak to as Matters of Knowledge—as to Opinions, I cannot.

A Member of the Court.

I fancy your Lordship has totally misunderstood my Question. I have not asked your Opinion, I will not ask your Opinion, or the Opinion of any Evidence that appears to this Court. I do expect from every Evidence, that he will answer to such Questions as shall be asked, that he swears the Truth, the whole Truth, and nothing but the Truth, so help him God. The Question I asked is, From your Lordship's own Knowledge or Observations of the Transactions of those two Days, did Admiral Keppel negligently perform the Duty imposed on him?

A. I perfectly understood the Question, if I understand the Language. It imports me much when I am upon my Oath to go by my own Understanding, and not by that of other People. The Term, Negligence, implies a Crime; I must be equal to the Duty of an Admiral commanding in Chief, before I can decide upon Oath, whether he did his Duty properly or not. It is for this Court to decide that, and not for me: I have answered the Facts, and if I am to be urged more by the Court, it is not the Admiral accused, but it is me that they are trying, because I am to form an Opinion, how that Fleet was to be conducted, and not the Man who commanded it. I think it is not my Duty, as a Witness, to do that; if it is pressed by One Member of the Court, I

must desire to have the Sense of the Court, that they will consider the Oath that they have taken—that I have taken—and take into their Minds; whether the Opinion of an Individual ought to influence their Judgment in a Trial of this Importance? If it is necessary that the Court should withdraw for that, I hope they will solemnly and deliberately consider the Situation they and I stand in, before they will call upon me to say, Whether the Admiral was guilty of Negligence, or not? A Matter of Fact, which may in one Case be meritorious, may in another be criminal; and I am called upon to decide, whether the Acts done by the Admiral that Day were meritorious or criminal? I have answered to every Fact, to every Motion of the Fleet that I observed, to every Signal of the Fleet that I saw; I am ready and willing cheerfully to answer every Question of Fact; but to answer, Whether I am of Opinion that the Admiral was guilty of negligently performing his Duty, or no? does not become me as a Witness. I speak freely, because my Situation becomes me to do so. I am an injured Man, if I must answer that Question; and if the Question is pressed upon me by an Individual, I hope the Court will consider a few Minutes my Situation—My Mind is very much agitated by such a Question.—I would add a few Words to what I have already said to the Court, which are; and I do it as now under the Sense and Impression of the Oath I have taken: It has happened to me during the Course of the Time I have had the Honour to serve under that Admiral, to disapprove in my own Mind of particular Steps, and upon farther Reflection and Consideration, to approve them, and to feel that I was wrong; after that, will the Court at this Moment call upon me to give an Opinion, that perhaps I may alter hereafter?

A Member of the Court.

My Lord, the Language you have made use of to this Court, will appear without Doors in a very strange Light.

A. I must insist upon stopping this; if I am to have a Question put to me, I believe it is the Right of every Member to do it; but if I must receive a Reprimand, it must be from the whole Court.

From a Member of the Court.

Q. You are to appear here as an Evidence, and answer such Questions as shall be asked you; and I believe in no Court of Justice in Great Britain would any Witness make use of the Language that has been made use of here to a Judge?

A. I am sorry to be treated with Warmth, I do not know I deserve it, if I did, I am ready to submit to the Court; but I spoke my own Opinion, I spoke my Feelings, when I objected to a Question I thought I was not bound to answer. I hope, if I am corrected, it will be by the Court, and not by an Individual of the Court. I believe it is the Rule of the Service. I submit to those more experienced in the Practice of the Court, that any Correction must come from the Body; and not from an individual Member.

A Member of the Court.

Indeed the whole Trial is a new Mode; I do not know what to say.

Another Member of the Court.

I differ exceedingly from his Lordship; because every Member of this Court has undoubtedly a Right to ask a Question; and there surely would be no End to a Trial, if every Member is to be asked if that Question is to be put.

A. I do not dispute the Right of a Member to put a Question, but one Member of the Court seemed to be passing a Censure.

A Member

A Member of the Court.

I can only say, that what has fallen from his Lordship appears greatly like a Censure upon the Court. During Forty-six Years Experience, Thirty of which I have had the Honour of being a Captain and an Admiral, I have sat at many Courts Martial, and I never saw an Evidence make use of Language to a Court like that which has now been made use of, and which, I hope, will have no Influence upon the Court.

A. I declare I felt no Disrespect for the Court. I was too much taken up by my own Feelings upon the Question put to me. I thought it my Duty to state to the Court my Objection to that Question, and to call upon the Court, in the most solemn Manner they could, to consider before they put that to me which I thought myself not bound to answer: It was Respect to the Court, and not Disrespect, which made me say that. I hope no improper Constructions will be put upon my Words. I am perfectly cool myself, though I am agitated. I meant to give no Offence, I am not conscious I have done it. I submit myself to the Court, and to their Candour and Consideration.

The Court retired,—and in about an Hour and a Quarter returned, when the President acquainted his Lordship, that he was directed by the Court to acquaint him with their Resolution, which was in the following Words:

“ My Lord, I am directed by the Court to observe to your Lordship, that in the Course of the Reasoning you have offered, in declining to answer the Question which has been put by One of the

Members of the Court, with the Approbation of the Whole, the Language made use of, and the Warmth with which it was expressed, are unbecoming the Dignity of this Court to receive.

“ The Treatment is such, that they cannot pass it over without observing to your Lordship the Sense they have of its Impropriety.

“ And it is their Pleasure, that I acquaint your Lordship with their Disapprobation of your Behaviour to them.”

The Judge Advocate then read the following Resolution:

“ That the Question which has been put to your Lordship shall be repeated; but as by the Oath you have taken, you have said, you conceive the Question to lead to Matter of Opinion, you are at Liberty to answer to it or not.”

The Question was then repeated.

Q. To your Knowledge and Observation, did Admiral Keppel negligently perform the Duty imposed on him on the 27th and 28th July?

A. It is my Duty, certainly, to submit with the greatest Respect to the Determination of the Court. I can only say, I had no Intention to give Offence. I meant to speak my Reasons for the Refusal, with Respect to the Court—It has appeared otherwise to the Court; and I am concerned that they should misconceive what I meant.

Court asked,

Q. Do you chuse to answer that Question?

A. I do not. I can give no Answer to that Question.

Adjourned, being past Four o’Clock, till Tomorrow at Ten o’Clock.

NINETEENTH DAY.

THURSDAY, the 28th Day of JANUARY, 1779.

COURT met according to Adjournment. Prisoner called in, and Audience admitted.

Lord Mulgrave called in again.

Court asked,

Q. What were the Defects of the *Courageux* after the Action?

A. The Mainmast very much wounded—Several of the Main and Foreshrouds shot away—Main and Preventerstays shot away—A double-headed Shot in the Foremast—The Maintopmast wounded—The Mizentopmast much wounded—The Mainyard wounded—The Maintopsail above the third Reef cut to Pieces, so that I was forced to close reef it, and the Mizentopsail pretty near the same—A great many Shot through the Main-sail, and Five Shot at and under the Water Mark, by the Carpenter’s Account to me; and the running Rigging very much cut—One of the Mainjeers and the Maintopchain were shot away.

His Lordship withdrew.

The Prosecutor then addressed the Court in the following Words:

Mr. President,

I shall now call Lord Sandwich, to exhibit and prove such Letters as his Lordship may have received from Admiral Keppel, in relation to the Engagement of the 27th of July, but I think it proper to inform the Court, that this is a Species of Evidence, for which I should not have called, if Admiral Keppel had not set the Example, by calling for my Letters to that noble Lord.—When

his Lordship is before the Court, to save Trouble, if Admiral Keppel has no Objection, I shall also ask for such of my Letters to his Lordship as have any Relation to the Engagement.—My Lord Sandwich is in the Town, I do not know whether he is immediately at hand.

The Prisoner, in Reply, addressed the Court as follows:

Mr. President,

So far from having any Objection to what is proposed by the Vice-Admiral, there is no one Act in my Life that I do not wish may come before you—whether it is private or public.

Court retired for Twenty Minutes, and when they returned, the Prosecutor again addressed the Court as follows:

Mr. President,

I am aware that my Letters to Lord Sandwich, are not Evidence against Admiral Keppel, nor do I recollect that they contain any Thing to his Prejudice, but the Admiral having called for them, it is to save the Trouble of calling his Lordship a second Time, that I propose now to have them produced.—Still I must be understood not to desire to have them read, unless Admiral Keppel desires it.

The Prisoner replied,

Mr. President,

If I should find it necessary to call upon the Earl of Sandwich, to produce the Vice-Admiral of the Blue’s Correspondence with his Lordship, or with the Admiralty, relative to the Transactions of the British Fleet on the 27th and 28th of July,

I will give his Lordship due Notice for that Purpose, but in the mean time I must object to their being exhibited at the Call of my Accuser; he has a Right to produce my own Letters as Evidence against me, but it belongs to me alone, and not to him, to make Evidence of his.

The Earl of Sandwich was called into Court, when the Resolution taken during their Retirement was read, and is as follows:

"Agreed, that this Court cannot take cognizance, in Point of Evidence, of any Matters contained in Letters of private Correspondence."

Lord Sandwich then addressed the Court in these Words:

Mr. President,

I only beg Leave to mention, it certainly does seem to me, as I perceive it has to the Court, that private Letters are a very unusual Kind of Evidence to be given.—I have brought the private Letters with me; if it is the Opinion of this Court that no private Letters are to be brought as Evidence, I flatter myself, the Court has no farther Occasion for my Attendance.—I know of nothing farther I have on either Side of the Question than private Letters, and I will add that there are in those private Letters, several Things I should have submitted to the Court, as being improper to be laid before the Court, not relating to the Business before them, but are Reasonings—Reasonings with regard to the State of the Navy—Reasonings with regard to Officers that must make them improper to be laid before the Court.

Court.

We have agreed they shall not be read, therefore we need not give your Lordship any farther Trouble.

Lord Sandwich withdrew.

Edward Michael Lord Longford, Captain of the America, sworn.

His Lordship not having heard the Charge, the same was read.

Prosecutor asked,

Q. Do you recollect the Time when you first saw the French Fleet on the Morning of the 27th of July?

A. I did not see the French Fleet that Morning till the Signal was made to chase.—I was not upon the Deck at Day-light, so I do not know at what Time they were first perceived.

Q. Do you recollect upon which Tack they were when you first perceived them?

A. They were upon the Larboard Tack, I think; the same Tack that we were.

Q. Do you remember when they changed their Tack, whether they tacked or wore?

A. I cannot be certain, but I rather believe they wore, I saw some of them wear, and I do not know whether they did not all wear.

Q. Did they appear to you to be in a Line?

A. They did at that Time.

Q. Did your Lordship observe when they changed their Tack again.

A. I did; it was, I think, a little before the Firing began, that I observed some were upon one Tack, and some upon another.

Q. Did you observe that they were that Time upon changing their Tack.

A. I did not observe particularly.—Some of them, I know, wore.

Q. Did they appear to you as they came upon the Larboard Tack, to form their Line upon that Tack.

A. It appeared to me that they did.

Q. What Part of the French Line did your Lordship fall in and begin the Engagement with.

A. We fell in with the Third Ship of the Enemy's Van, and began our Fire upon the Fifth or Sixth Ship, I think; the others were at too great a Distance.

Q. At that Time was any other of our Ships so near the America, as to be of Aid and Support to each other?

A. Yes, the *Terrible* was very near the *America*, a little upon the Weather-bow, and the *Elizabeth* was very near, a little upon the Lee-quarter; we were all Three very near each other.

Q. Did they continue so throughout the Engagement?

A. We did so for a considerable Time.

Q. Was the *America* one of the Vice-Admiral of the Blue's Division?

A. She was.

Q. Do you remember Signals being made for Six Ships of that Division to chase that Morning?

A. I do.

Court asked,

Q. Can your Lordship name the Ships?

A. The *America* was one; I cannot name the rest.

Prosecutor asked,

Q. If the Ships of that Division had been permitted to remain together, might not the whole Division have gone into the Engagement, together with their own Flag, and engaged as their own Flag did, if they had not been separated by the Signal to chase?

Here his Lordship was informed by the Court, that if any Question is put to him, which he may look upon as Matter of Opinion, he is at Liberty to answer or not as he thinks proper.

A. If the Wind had continued as it was when the Signal was made to chase, and that the Signal had not been made, I do not believe that any Part of the Vice-Admiral of the Blue's Division could have come into Action at all.

Q. Under those Circumstances you have mentioned, in that Case would the Center Division have been able to come into Action at all, any more than the Vice-Admiral of the Blue's?

A. I do not know, but the Center must certainly have come into Action sooner, because they were to Windward of the Vice-Admiral of the Blue.

Q. As your Lordship has answered Questions that are somewhat Matters of Opinion, I will ask, whether if the Signal had been made for the whole of the Admiral of the Blue's Division, instead of a Part of that Division, would it not have had the same Consequences to the Whole as to a Part?

A. If they had been all together, I believe it would.

Q. You mentioned the Signal was for Six Sail?

A. I know it was for several, and mine among the rest, I cannot be positive to the Number.

Q. Do you remember how much the Wind shifted?

A. I do not indeed exactly.

Q. How was the *America* situated with respect to the *Victory* at the latter Part of the Engagement?

A. Very soon after I had passed the sternmost of the French Ships, I passed ahead of the *Victory*; she was then upon the Larboard Tack, standing towards the Enemy.

Q. I mean before your Lordship was out of Action?

B b

A. I

A. I did not see her when I was engaged, not to distinguish her from any other Ship.

Q. Was the Signal for Battle flying then?

A. I do not recollect at that Time.

Q. Was you ahead of the Vice-Admiral of the Blue when you came out of Action?

A. I was.

Q. At the Time you are speaking of, when you passed ahead of the *Victory*, did you take Notice of the Red Division?

A. I did, a very short Time before I passed ahead of the *Victory*, I passed under the Lee-quarter of the *Queen*, who was on the Larboard Tack, also standing towards the Enemy?

Q. Did you take Notice of the Vice-Admiral of the Blue when he came out of Action?

A. I did not particularly just at that Time.

Q. Do you remember at what Time you did happen to take Notice of him?

A. I do not particularly.

Q. Did you observe the *French* Fleet when they began to lay their Heads to the Southward?

A. I believe I saw them soon after they began, I do not know whether I did when they first began to lay their Heads to the Southward, my Head was to the Southward too, I was upon the Quarter-deck, and did not see them at first.

Q. Was that before or after the Admiral had wore and laid his Head to the Southward, to the best of your Lordship's Recollection?

A. I cannot recollect.

Q. I think you have said you passed ahead of the *Victory*, and to Leeward of the *Queen*?

A. I did.

Q. Then, by that Description, the Red Division were to Windward of the *Victory*?

A. They were.

Court asked,

Q. Was it the whole of the Division?

A. I do not know whether the whole Division, but such as I saw, that stood after Sir Robert Harland at that Time.

Prosecutor asked,

Q. Were they to Windward of the Rear of the Enemy at that Time?

A. I am not certain, I believe they might have weathered the Rear of the Enemy at that Time.

Q. Did you observe when the Admiral wore and laid his Head to the Southward?

A. I did not.

Q. At the Time your Lordship has mentioned you saw some of the *French* Ships laying their Heads to the Southward, which Way was the Admiral then standing, to the best of your Recollection?

A. I answered that Question before, I do not recollect which Way the Admiral's Head was when first I observed some of the *French* Ships with their Heads to the Southward.

Q. After that Time did the whole of the *French* Fleet continue to stand with their Heads to the Southward?

A. They appeared to me from that Time to begin to form their Line; they led out one Ship after another from the Body of their Fleet, as it appeared to me, very slowly.

Q. Did they continue to do so all the Afternoon?

Q. They appeared to me to do so all the Afternoon.

Q. Did the *British* Fleet stand to the Southward all that Afternoon?

A. The *British* Fleet formed their Line with their Heads to the Southward, and continued to stand upon that Tack all the Afternoon.

Q. From the very brisk Fire that our Ships

kept up after the Time they engaged, has your Lordship Reason to believe that the *French* must have suffered in Proportion to the *British* Fleet in some Way or other?

A. They did not appear to have suffered so much as some of the *British* Fleet appeared to have suffered in their Sails and Rigging, but I hope they suffered more in their Men.

Q. From the Motions of the Enemy during that Afternoon in standing to the Southward and forming a new Line of Battle, did that shew a Disposition in them to renew the Engagement or to avoid it?

A. If they had been inclined to renew the Engagement, I apprehend they might have fetched within Shot of the *British* Fleet—there was nothing I could see to prevent it;—they shewed a Disposition to fight if they were attacked, but I do not apprehend they meant to renew the Engagement.

Q. Did your Lordship observe that any of those Ships, as they advanced under the Lee of the *British* Fleet, fired at one of our Ships that was left astern?

A. I did not see it.

Q. How many of the *French* Fleet were in Sight the next Morning?

A. Three Sail, I think.

Q. Did those Three Ships appear to you to be Line of Battle Ships or Frigates?

A. I was so far from them I could not distinguish whether they were Line of Battle Ships or Frigates.

Q. Were they chased by the *British* Fleet, or any Part of them?

A. I do not know.

Prosecutor has done with the Witness.

Prisoner asked,

Q. Do you recollect when you made Sail by Signal in the Morning at Five o'Clock, what Sail the Vice-Admiral of the Blue was under?

A. I do not know what Sail the Vice-Admiral of the Blue was under, I was under my double-reefed Topsails and Foresail.

Q. Did the Vice-Admiral of the Blue's Division set all their Sail at the Time the Signals were made to follow the chasing Ships?

A. I did not observe.

Q. Your Lordship has heard all the Articles of the Charge read, therefore I must desire your Lordship to state to the Court any Instances, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I can state no such Instances to the Court, for I know of none.

Prisoner has no further Questions to ask the Witness.

Withdrew.

Mr. Robert Christian, Master of the *Ramillies*, sworn.

Prosecutor asked,

Q. Have you brought your Days Works for the 27th and 28th July?

A. Yes.

Q. Give an Account of the Latitude, Bearings, and Distances of *Ushant* on the 28th of July?

A. Latitude 48° 20', Bearings North 86° East, Distance 52 Leagues.

Court asked,

Q. How comes it that Two Leaves are torn out of your Log-book, those for the 26th and 27th July?

A. They

A. They never were to my Knowledge. (*The Log-book is shown to him*) I suppose they were cut out by some of the young Gentlemen of the Ship—there never was any Thing wrote on the Two old Leaves.

Q. How was the Wind on the 28th in the Morning?

A. On the Western Hank.

Prosecutor asked,

Q. What Weather was it at that Time?

A. Moderate Weather.

Q. Do you consider *Ushant* as a dangerous Lee-Shore, the Wind being westerly, and the Weather moderate?

A. No.

Court asked,

Q. Would you have ventured upon that Shore with crippled Ships?

A. Not too near it.

Prosecutor asked,

Q. Have you been used to cruise off *Brest* and *Ushant*?

A. In the late War I was.

Q. Do you apprehend any imminent Danger in chasing Ships in the Middle of Summer within *Ushant*, and off *Brest* Harbour?

A. No.

Q. Can you inform the Court how much the Wind shifted in the Morning of the 27th, from Six o'Clock to Ten?

A. I cannot.

Court asked,

Q. Could you recollect it if you had your Log-book before you?

A. It is down in the Log-book.

Q. Have you your private Log-book that you keep your Day's Reckoning from?

A. Not with me.

Prisoner objects to any thing taken from a Log-book where Leaves have been torn out.

Prosecutor.

A great deal has been taken from the *Formidable's* Log-book, with the Court's Permission.

What I want to establish from the Evidence of the Master's, is the Shift of Wind in the Morning of the 27th, from Six to Ten o'Clock.

The Court having observed, that the Number of Points the Wind shifted has been variously spoken to, some making it Three, some Two or Three Points, and that the Matter itself is not worthy much Notice,—The Prosecutor thereupon declined asking the Witnesses any more Questions.

Prisoner.

As I shall not condescend to measure my Conduct as Commander in Chief of the Fleet, by the Opinion of a Master of a Ship, I shall put no Questions to the Witness at all.

Witness withdrew.

Richard Storey, Master of the *Shrewsbury*, sworn.

Court asked,

Q. Have you got your Log-book with you?

A. Yes, I have.

Sworn to the Truth of the Entries in the Log-book.

Prosecutor asked,

Q. Do you remember the *Shrewsbury* wearing and standing towards the Enemy, before any other Ships of the Red Division?

A. Yes, we did.

Q. Do you remember the Occasion of it, and

for what Purpose it was declared to be at that Time, and by whom?

A. I really do not know.

Q. Do you remember about that Time, taking Notice of the Ships of the Vice-Admiral of the Blue's Division that remained engaged?

A. None but the *Formidable*.

Q. What Observation did you make relative to her Situation at that Time?

A. Nothing more than seeing her engaged. I could see nothing but her Flag, and the upper Part of her Topsails.

Q. Did you take Notice of the *Formidable* after she came out of Action?

A. No further than seeing her Sails much shattered with Shot.

Q. After the Red Division had tacked, did you observe what Sail the *Victory* was under whilst she was upon the contrary Tack?

A. I did not.

Q. How much did the Wind shift in the Morning of the 27th, from Six o'Clock till Ten.

A. It was not taken off on the Log book till after the Engagement, it was put on the Log-board, and taken off from it.

Court asked,

Q. From your own Knowledge, from Six o'Clock till Ten, do you remember, on the 27th July, how many Points the Wind shifted?

A. I do not suppose it shifted above Two and a Half Points, or Three Points at most.

Looked into his Log-book, and found it marked, that the Wind shifted Two Points in that Time.

Prosecutor asked,

Q. There are Two or Three Days Works in the Log-book that are crossed out and entered anew; what is the Reason of that?

Looked again in the Log-book.

A. There was not Room in the Page that was ruled to insert every Transaction, therefore, I crossed it out, and here is the 27th in the following Page. They both stand; it is all very fair; I wrote it myself.

Q. I think you said, it appeared by the Log-book, there was a Shift of Wind of Two Points; it stands, I perceive, in the Log-book at Six, S. W. by W.; at Seven, at S. W. and remains so till Ten o'Clock?

A. I cannot say whether it might be mentioned or not, upon the Account of our being busy in clearing the Ship for Action.

Court asked,

Q. Do you recollect whether the Ship would have been able to have come into Action that Day if the Wind had not shifted?

A. We certainly could not.

Prosecutor asked,

Q. Do you remember seeing the French Fleet that Morning tack or wear, once or twice before the Action began?

A. I did.

Q. Did they wear twice?

A. They either wore or tacked twice.

Q. Can you say whether they tacked or wore?

A. The last Time they wore, but the First I am not certain.

Q. If the French Fleet wore twice, would not that bring them on their Bearings to the British Fleet, nearer than they would have been if they had not so wore?

A. Most certainly.

Q. Then if there had been no Shift of Wind, would not that have occasioned the British Fleet to lay more up with them when they tacked than if they had not wore?

A. It certainly would.

Q. At

Q. At the Time you mention they did to your own Knowledge wear, had they not run a good Way to Leeward before they hauled their Wind on the contrary Tack?

A. I cannot tell what Distance they might run to Leeward, but it was very thick for some Time; when it cleared away, I counted Six Sail before the Wind, I was upon Deck with my Glafs in my Hand.

Court asked,

Do you remember what Observation you made of it in your Log-book at that Time?

A. To the best of my Remembrance I mentioned in my Log-book I thought they were bearing away for *Brest*.

Prosecutor asked,

Q. By those Ships having gone before the Wind as you describe, was not that the Cause the *British* Fleet made so well up with them when they tacked?

A. Certainly.

Q. Do you remember how the Wind was on the 28th in the Morning?

A. That I must refer to my Log-book (looked) West.

Q. What Sort of Weather?

A. Something hazy.

Q. But as to Quantity of Wind?

A. The Ship might have carried whole Top-sails upon a Wind.

Q. Do you consider *Ushant* as a dangerous Lee-shore, in the Middle of Summer, moderate Weather, and the Wind at West?

A. Not in a single Ship; as for a Fleet, it is more dangerous certainly.

Q. Is *Ushant* at that Distance with that Wind a Lee-shore at all, and dangerous with the Wind at West, for a single Ship, or any Number of Ships?

A. It may be made a Lee-shore by running too far to the Southward.

Q. I am stating my Question by supposing yourself in the Latitude of *Ushant*, or nearly so?

A. Then it cannot be a Lee-shore without a Person makes it so himself by running upon it.

Prosecutor has done with the Witnesses.

Prisoner asked,

Q. The Prosecutor has avoided asking this Gentleman for his Day's Work for the 28th, have you got it with you?

A. I have not.

Court asked,

Q. What Distance was you from *Ushant* the 27th in the Morning?

A. At Eight o'Clock on the 27th, *Ushant* S. 84. E. 19 Leagues; I worked it, and gave it to Sir *John Ross* at Eight o'Clock.

Prisoner asked,

Q. When we got upon the Starboard Tack after the Enemy, was not the *Shrewsbury* upon the Weather-bow of the Admiral of the Fleet?

A. About Half an Hour after we tacked—I believe we tacked astern of the *Victory*.

Q. Did you look at the Admiral just before you came to Action?

A. I did not?

Q. Do you recollect about Four Days before the *English* and *French* Fleets came together, a very strong Wind at N. and by W. that obliged the Fleet to stand to the Southward, and crippled many of them, the *Victory* particularly?

A. I recollect it blew very fresh some Time before we saw the *French* Fleet, and to the best of my Recollection, I think the *Victory's* Main-yard

was gone, either carried away, or down upon the Deck, I am not certain which.

Prisoner has no further Questions to ask, the Witness.

Withdrew.

Mr. — Read, Master of the Queen, called for, but not in the Way.

Mr. John Madgson, Master of the Victory, sworn.

Court asked,

Q. Have you been sworn to the Book you delivered in?

A. Yes, I have, and not understanding the Nature of the Oath, I recollect upon overhauling my Remarks for that Day, I found the Wearing at Three in the Afternoon on the 28th by Log was omitted, I afterwards inserted it opposite the Hour, but I had forgot when I gave my Oath the other Day, that I had put it in.

Q. Who did you take it from when you inserted it in your Log-Book?

A. Upon Recollection: overhauling my Remarks, and finding it not there, I put it into the Hour of Three.

Q. Was it by the Desire of any Body that you interlined that, or made any Alteration upon the Oath you have taken?

A. No, upon the Oath I have taken.

Q. The Courses both Ways were inserted—Were they not?

A. Yes.

Q. At what Time was the Omission?

A. The Wearing at Three o'Clock on the 28th by Log, the Day of the Action.

Prisoner asked,

Q. When did you insert it?

A. I cannot tell the Day—within a Fortnight or Three Weeks—I believe some Days before it was brought into Court.

Court asked,

Q. Is this the Original rough Log-Book that was kept for the Use of the Ship, or your own?

A. There was no Mate on board to keep the Log, I was obliged to keep it myself; so that it is taken from the Minutes on the Board, and from a Slate I kept for that Purpose.

Prosecutor asked,

Q. Was there no rough Log-Book kept for the Use of all the Quarter-Deck and the Officers?

A. There was a rough Log-Book, which the Mate was to keep; but he was so neglectful of it, that he did not copy from this Book—There were several Days back when I inspected into it not inserted; but this is the original Log-Book for the Use of the Ship—there is no other complete Log-Book for her.

Court asked,

Q. Was that Log-Book taken from the Board as the Ship's Log-Book?

A. Yes, from the Log-Board, and from a Slate I kept.

Prosecutor asked,

Q. Was there not a rough Log-Book kept for the Use of the Ship, as is usual in every Man of War, independent of this?

A. The other that I had for the Mate, teaching him how to take a Log, was very imperfect, and not copied from mine that I took from the Board.

Court

Court asked,

Q. Was the Log-Book, that you now have sworn to, taken off Day by Day?

A. Yes—From the Log-Board, and from a Slate that I kept Remarks on.

Prisoner asked,

Q. And every Body was permitted to copy from it?

A. Yes.

Court asked,

Q. Was the Log-Book, said to be the rough Log-Book, copied from this you have now delivered in?

A. Yes.

Q. And this is the genuine Log-Book of the *Victory*?

A. Yes, it is.

Prosecutor asked,

Q. What Alteration was there in the Wind from Six o'Clock in the Morning, till Ten on the 27th of July?

A. One Point on the Face of the Log-Book.

Q. What are your Days Reckonings on the 27th and 28th July?

A. On the 27th Lat. $48^{\circ} 31'$ North Bearings of *Ushant*, S. 89° , E Distance 36 Leagues—On the 28th Lat. $48^{\circ} 10'$ North, Bearings of *Ushant* N. 75° , Distance 27 Leagues.

Q. Are those your current Reckonings, or Back Reckonings from the Land?

A. They are the current Reckonings, worked each Day.

Q. How was the Wind and Weather on the Morning of the 28th?

A. The Weather was squally—The Wind, I believe, about W. and by N.

Q. Do you consider *Ushant*, with that Wind and Weather, as a dangerous Lee-Shore in Summer-time?

A. With the Wind and Weather we then had, I should have thought it, if we had been near, a dangerous Lee-Shore.

Q. Would you consider it so, when you were in the Latitude of *Ushant*, or near that Latitude?

A. *Ushant* itself is but a small Spot, and a Ship might clear it with the Wind at W. N. W. in moderate Weather.

Prosecutor has no further Questions to ask.

Court asked,

Q. If you were Master of a Flag Ship, with a Fleet of Thirty Sail of the Line, all of them in good Condition, and not disabled, should you chuse, in the Afternoon of any Day, though the Weather was fine, to run nearer upon the Enemy's Shore than Five or Six Leagues, Night coming on?

A. No.

Q. Suppose you in the *Victory* going Two Knots, with a Ship astern of you going Three Knots and Three Knots and Four Fathom, do you not think that the Ship astern would come up with the Ship ahead that goes Two Knots?

A. I do.

Prisoner.

If the *British* Fleet, after the Action of the 27th, had been catched in with *Ushant*, as they were a Week or Eight or Nine Days before, with the Wind at N. and by W. and such a Gale of Wind as when the *Victory* broke her Main-yard, do you think they would not have been in a perilous Situation?

A. With the Wind Westerly, as it was at that Time, and blowing as hard as it did then at N. N. W. on that Day, they would have been in great Danger.

Q. Do you remember whether the Vice-Admiral of the Red, in the Morning after we stood upon the Starboard Tack, was upon the Weather-bow?

A. I do not recollect seeing him on the Weather-bow; but when I saw him, I took Notice of the Ship—it was just before the *Victory* wore, and then he was one Point abaft the Beam.

Q. Do you recollect whether the Signal was made for the whole Fleet to tack together about Ten o'Clock in the Morning of the 27th?

A. The general Signal for Tacking was made to tack about that Time.

Q. Do you recollect, upon some Change of Wind, whether One, Two, or Three Points, the Vice-Admiral of the Red came upon the Lee-bow of the *Victory* about Half after Ten, or thereabouts?

A. I recollect seeing him near or about Two Points upon the Lee-bow.

Q. Whether the *French* Ships upon the Lee-bow of the *Victory* had not the Appearance of being in Confusion?

A. They had.

The Prisoner having no further Questions to ask, then said,

I desire to take Notice to the Court, that the Alteration the Master has made in the Log-book from Recollection, is the Insertion of one of the principal Facts which my Accuser makes the Matter of his Charge; the Alteration will certainly, therefore, not appear as a Crime against him.

Witness withdrew.

Mr. Henry Cooper, Master of the *Duke*, sworn.

Prosecutor asked,

Q. Did not the *Duke* fire into the *Foudroyant*, during the Engagement, by Mistake?

A. Not to my Knowledge.

Q. Do you consider *Ushant* as a dangerous Lee-shore, with the Wind Westerly, in moderate Weather and Summer-time, within the Distance of Two Leagues, and in the Latitude of it, or nearly?

A. Yes, I do.

The Prosecutor has done with the Witness.

Prisoner.

I beg Leave to say a Word in Answer to what dropt from the Vice Admiral, whilst the Earl of *Sandwich* was in Court.

Sir *Hugh Palliser* has said that I had set the Example of calling for private Correspondence; I have not as yet opened my Defence, or called for any Evidence, and of course can have set no Example; I have not summoned the Earl of *Sandwich*, my Reason for giving Notice to his Lordship, that perhaps I might call upon him to produce Sir *Hugh Palliser's* Letters, was solely with a View to prove (what from those I had myself received I imagined to be the Case) that the Tenor of his Correspondence at that Time, was very inconsistent with the Accusation he has since thought proper to prefer against me: This Point my Accuser has admitted, by saying, that he does not recollect that his Letters contain any Thing to my Prejudice. As to any Secrets of his Correspondence with the Earl of *Sandwich*, I neither fear nor desire their being made public, and I acquiesce with perfect Deference in the Decision of the Court, in respect to the Non-production of them.

Adjourned, being Half past Three o'Clock, till To-morrow at Ten o'Clock.

C c

TWENTIETH

T W E N T I E T H D A Y.

FRIDAY, the 29th of JANUARY, 1779.

COURT met according to Adjournment.
Prisoner brought in, and Audience admitted.

Mr. Thomas Reid, *Master of the Queen,*
sworn.

Prosecutor asked,

Q. What was the Situation of the Red Division in the Afternoon of the 27th *July*, with respect to the Rear of the Enemy, when the Admiral made the Signal to wear and stand to the Southward?

A. The Red Division was about Two Miles, as near as I can judge, from the Rear of the Enemy.

Q. Do you speak at the Time the *Queen* wore to stand from them, or are you speaking of a Time earlier than that?

A. At the Time the Signal was made for wearing, we were rather nearer than Two Miles; I speak when we first shortened Sail.

Q. Do you mean on the Larboard Tack?

A. I mean when we wore from the Larboard to the Starboard Tack.

Q. Was you then to Windward or to Leeward, or in what Position from them.

A. They were about a Point on the Lee-bow.

Q. Is this Log-book which you have given in, the original rough Log-book, kept for the Ship's Use, on board the *Queen*?

A. No, it is my own Log-book, kept daily, and shewn every Day.

Q. Where is the original rough Ship's Log-book?

A. At *Plymouth*.

Q. This is not the Log-book that you swore to sometime ago?

A. Yes.

Court asked,

Is it the Log-book kept Day by Day during the Time you was employed in that Service?

A. Yes, it is.

Q. Is this the Log-book you can swear to more particularly, than you could to the Ship's Log-book?

A. It is, being kept by myself Day by Day.

Q. Was the rough Log-book taken from this, or this from that?

A. The Mates wrote that Log-book every Day from the Log-board, I took this off every Day from the Log-board myself.

Q. Has there been any Addition, Alteration, or Amendment of any Kind whatever, from the Time you first wrote it?

A. No, there has not, unless there might be about Articles of opening Beef and Pork, and such Things, but there has been nothing wrote since respecting those Days in *July*.

Prosecutor asked,

Q. Did you never at any Time copy the Days Works from the Ship's Log-book, into your Book?

A. Not at Sea; Harbour-work frequently.

Q. Do you call coming very near the Rear of the Enemy the Distance of two Miles?

A. We were not within Gun-shot of them at that Time.

Q. Then do you mean less than Two miles by that?

A. Yes.

Q. There is a Note in the Log-book instead of an Interlineation; it is wrote with other coloured Ink, and I should presume at a different Time; I would ask the Witness whether this Note was wrote the same Day as the rest. "At this Time the *Victory* hauled down the Signal for engaging;" which is a reference up to a Time in the former Part of the Occurrences. Was that Reference wrote at the same Time with the rest of the Day's Work; it appears to be a different coloured Ink, and wrote with a different Pen?

A. It was wrote some Part of the same Day, though not at the same Time; it was omitted in writing off the Log.

Q. What is the Reason that there is no Log-mark from One o'Clock till Five in the Afternoon of the Day of the Engagement?

A. The Reason was, that the Variety of the Courses and Distances we steered were too complicated to make any straight Remarks.—We were never Half an Hour without running fast or shortening Sail.

Q. Is it usual for four or five Hours to omit giving some estimated Rate and Course upon the Log-book?

A. In Cases under those particular Circumstances, I apprehend the Omission would not be censured.

Court asked,

Q. What do you mean by the Word "various." Do you only mean at Twelve o'Clock, or till you took Notice of the Wind and Weather again?

A. With respect to the Variety of Courses, it is meant only from Eleven to Twelve o'Clock.

Prosecutor asked,

Q. Is not that whole Time, during which the Log is omitted to be marked, for Time after you came out of the Engagement?

A. Part of it is, and part not.

Q. At what Time did the *Queen* come out of the Engagement?

A. About Half an Hour after Twelve, as near as we could judge.

Q. Then is not the Time spoken of in which the Log is not marked after that Hour?

A. The Log was not marked till we were a little settled in our Stations. In Fact, during the Time not marked, we tacked and were forming a Line, and in different Situations, that would not admit of any straight Course.

Q. Are you sure that there is nothing marked for those Hours in the original rough Ship's Log-book?

A. There is not.—I have seen it.

Q. What is the Reason why one of the Leaves of this Log-book is cut out; the 24th, I believe it is, when the *French Fleet* were in Sight?

A. This Book, after the Ship was cleared, was left out, and got blotted; so that I cut it out, and had a fair Book, as it was shewn to the Admiral every Day.

Q. How much did the Wind shift from Six o'Clock to Ten in the Morning of the 27th?

3

A. About

A. About two Points.

Q. Does it appear so by the Log-book?

A. No.

Q. Is it One or Two by the Log?

A. One Point.

Q. Do you remember taking particular Notice of the *French Fleet* in the Morning of the 27th, and at what Time?

A. I did not take particular Notice of them till we tacked at Ten o'Clock.

Q. Did you see them tack or wear that Forenoon?

A. I did not take particular Notice of their manœuvring, being busy on board my own Ship.

Q. Have you brought your Days Works for the 27th and 28th?

A. Yes.

Q. Give an Account of the Latitude, Bearings, and Distances of *Ushant* each Day at Noon.

A. The 27th at Noon, Latitude in $48^{\circ} 36'$ North—*Ushant* S. 86° E. 28 Leagues Distance.—The 28th, Latitude in $48^{\circ} 8'$ —*Ushant* N. 74° E. Distance 26 Leagues.

Q. In the Morning of the 28th, what Part of the *French Fleet* were seen from the *Queen*?

A. Three Sail, imagined to be Part of the *French Fleet*?

Q. Were no other Ships seen, supposed to be the *French Fleet*?

A. Not that I heard of; I could see none myself.

Q. Was not the Signal made on board the *Queen* of seeing a Fleet?

A. Not to my Knowledge on the 28th.

Q. How were the Wind and Weather on the Morning of the 28th?

A. The Wind was Westerly, and moderate Weather.

Q. Were the Wind and Weather such, that you would have advised not to chace a flying, beaten Enemy, from any Apprehension of Danger, from *Ushant* being a Lee-Shore?

A. Ships might have chaced, that were not disabled, without considering *Ushant* as a dangerous Lee-Shore then.

Q. Were any Part of the Fleet then dismasted?

A. None were dismasted; many of them appeared very crippled.

Q. Was that Appearance of being crippled, in their Sails and Rigging only, or did it appear in their Masts?

A. It appeared in their Masts; many of them were preparing, in Appearance, to fih their Top-masts; many of their Top-sails being on their Caps.

Q. In what Situation must a Ship be, and in what Weather, to make *Ushant* a dangerous Lee-Shore?

A. When they are prevented carrying Sail, owing to Variety of Accidents, or its blowing hard.

Prosecutor has no further Questions to ask.

Neither have the Court or Prisoner any Questions to ask.

Withdrew.

Court objected to further Examination of Masters, with respect to Log-books, on Matter not immediately to the Point; as it is taking up the Time of the Court to no Purpose.

Richard Searle, Master of the *America*, sworn.

He is told he may answer to Questions on Matters of Opinion, or not, as he pleases.

Court asked,

Q. Is your Ship's Log-book here?

A. Yes; and is without Addition, Alteration, or Correction, or Erasurements; sometimes it was copied from the Ship's original rough Log-book, and sometimes the rough Book was copied from it; and I took it, Day by Day, at Sea myself.

Prosecutor asked,

Q. What Shift of Wind was there from Six o'Clock to Ten, on the Morning of the 27th of July.

A. The Wind shifted about four Points, from South-west to West.

Court observed, that if the Witness had a Doubt about it, he might refer to his Log-book, to see how it was there;—if he had any Recollection of it, he should speak from that Recollection, without referring to his Log-book; the Log-book being only to refresh his Memory.

A. To the best of my Recollection, it shifted four Points from Nine till Ten.

Prosecutor asked,

Q. Are the Courses allowed in your Reckonings according to that Shift of Wind, or according to what it is in the Log-book?

A. The Courses are according to what is mentioned in the Log-book; the Shift of Wind is not mentioned in the Log-book.

Q. How were the Wind and Weather on the Morning of the 28th?

A. The Wind was about West, as near as I can recollect, and moderate Weather.

Q. Would you have advised not to chace a flying Enemy at that Time, for fear of making *Ushant* a Lee-Shore, at that Season of the Year?

A. I should not be afraid of making *Ushant* a Lee-shore, till I drew within three or four Leagues of the Land.

Q. Under what Circumstances must a Ship be to make *Ushant* a dangerous Lee-Shore; what Kind of Weather must it be?

A. When a Ship is between *Ushant* and the *Seams*, and blowing a Gale of Wind at West North-west or West, I should suppose her in great Danger.

Q. Then until a Ship comes between *Ushant* and the *Seams*, would you consider her in great Danger, while she was without, supposing it moderate Weather?

A. Not in the least Danger, if she could carry Sails.

Court asked,

Q. Until a Fleet of thirty Sail, some of them disabled, come between *Ushant* and the *Seams*, would you consider such Fleet in great Danger, while it was without, supposing it moderate Weather?

A. Not if they were three or four Leagues without the Lines of *Ushant* and the *Seams*.

Prosecutor asked,

Q. Then one Ship, or thirty, if they can all carry Sail, supposing it moderate Weather and Summer-time, is it not the same Thing?

A. I look upon it that one Ship could get much faster off the Land than a Fleet could, even in moderate Weather.

Prosecutor has no further Questions to ask.

Prisoner says,

Not being one of the Brethren of the *Trinity-House*, I shall not ask this Gentleman any Questions.

Witness withdrew.

Mr.

Mr. Thomas Bailey, Master of the
Foudroyant, sworn.

Prosecutor asked,

Q. Is this the original rough Ship's Log-book kept on board the *Foudroyant*?

A. Yes; it is the Log-book I received from the Master I succeeded, and is the Log-book kept at the Time of the Action, and kept from Day to Day.

Q. Was there no other public Log-book kept for the Use of the Quarter-deck?

A. There was one for the Use of the Midshipman and Mates in the Orlop.

Q. Was no Part of this Book ever copied from that Book?

A. No.

Q. Then this is not the public Ship's Log-book that every Body had Access to, or was the other for that Use?

A. Only the Captain and Lieutenants had Access to this.

Q. Do the other Log-book and this exactly agree?

A. I never looked at the other.

Q. Have you brought your Days Work for the 27th and 28th?

A. They are in the Log-book.

Q. Mention the Latitude, Bearings, and Distance of *Ushant*, on the 27th and 28th.

A. The 27th, Latitude $48^{\circ} 38'$. Bearings, *Ushant* E. $\frac{1}{2}$ S. Distance 27 Leagues.—The 28th, Latitude $48^{\circ} 17'$. Bearings, *Ushant* E. 11° N. Distance 21 Leagues.

Q. How much did the Wind shift from Six o'Clock till Ten in the Morning of the 27th?

A. I do not recollect it shifted at all in that Time.

Court asked,

Q. Did it shift afterwards, and at what Time, and how many Points?

A. Between Ten and Twelve it shifted two Points.

Prosecutor asked,

Q. What Kind of Weather was it in the Morning of the 28th?

A. I do not recollect; I beg Leave to refer to the Log-book—

(Looked at the Log-book)

Fresh Gales, and cloudy.

Q. Under the Circumstances of Wind and Weather as they then were, would you, as Master and Pilot, have objected to chasing a flying, beaten Enemy, from an Apprehension of *Ushant* being a dangerous Lee Shore?

A. That must depend upon the Circumstances of the Ship I was in.

Q. Suppose a Ship that can carry Sail, with all her Masts standing?

A. With every Thing standing as a Man of War, I should have no Objection to chasing.

Court asked,

Q. In the Situation the *Foudroyant* was in that Day, would you have objected to chasing?

A. Yes.

Prosecutor asked,

Q. At that Distance from the Land, should you have thought yourself in Danger?

A. Not at that Distance.

Q. What Sail could she have carried upon a Wind?

A. Her Third-reef Topsails.

Q. Would she have been able to carry her Topsails three Reefs in, supposing her within a few

Miles of *Ushant*, with the Wind at W. or W. N. W.; the Variation in your Favour too, and in the Latitude, or nearly the Latitude, of *Ushant*?

A. Yes; she might have carried that, but not more.

Q. Would she, under those Circumstances, be in any Danger?

A. Yes.

Prosecutor has no more Questions to ask the Witness.

Nor has the Prisoner.

Withdrew.

Mr. John Forbes, Master of the *Berwick*,
sworn.

Prosecutor.

Q. I will not ask the Master any Questions about the Log-book; there can be no Occasion for it; I will only make one Observation, That I perceive there are a great many Additions made to it on the 28th of July, wrote in a different Hand, and with different Ink. I dare say they are all Facts, are innocent, and have no ill Meaning in them. I only remark, that there is that Circumstance attends the Log-book.

A. There is nothing in the Log-book but what I saw myself, and put down myself at Twelve o'Clock that Day; it was done the same Day.

Q. During the Engagement of the 27th of July, did not some of our Ships fire into the *Berwick*?

A. Not to my Knowledge.

Q. Did you not understand that it was so?

A. I heard so by Report of the Ship's Company, but not to my own Knowledge.

Q. By that Report, was it not said that some Men were killed by it?

A. Not to my Knowledge.

Q. Did you receive no Shot on the Larboard Side?

A. None that I saw.

Prosecutor has no further Questions to ask the Witness.

The Prisoner having none,

He withdrew.

Prosecutor.

Mr. President, As the Court are pretty well tired about the Chapter of Log-books and Lee-Shores, and would, I apprehend, not choose any more upon that Subject, I only mention one Circumstance relative to this, which is to inform the Court, that the Expresses which were sent after Lieutenant *Parry*, who is supposed to have the Minute-book of the *Formidable*, have not yet produced an Account of it; but, by Letter from the Secretary of the Admiralty, I am informed Expresses were sent to meet him at the *Nore*, it being supposed that the Tender he was in was on her Way to the *Nore*. But if he should come before the Proceedings are closed, and the Court and Admiral *Keppel* shall desire any further Explanation, I request that Mr. *Parry* may be examined when he does come. I am also ready to give any other Information in my Power relative to the *Formidable's* Log-book, which the Court or Admiral *Keppel* shall require.—As to the Log-book of the *Robust*, I think it unnecessary to take up the Time of the Court with any farther Examinations about it. On the one hand, Captain *Hood* acknowledges what Additions and Alterations were made; and on the other, it is not yet pretended that those Alterations or Additions are in the least contrary to Truth. I shall offer nothing more upon the Subject of the Log-book,

except the Court have any thing more to require upon that particular Point.

The Letter that was read some Days ago from Admiral Keppel to the Secretary of the Admiralty, mentions another Letter having been wrote on the 24th of July. I desire that Letter may be read.

Prisoner.

Before that is read, I shall beg to be heard relative to what the Vice-Admiral read before. As I shall not trouble the Court with any farther Examination concerning the *Formidable's* Log-book, so neither shall I object to the Vice-Admiral's calling Witnesses to that Matter during the Progress of this Cause.—With respect to the Additions and Alterations in the Log-book of the *Robuste*, I shall take the Freedom to offer some Observations, as well as Evidence, to shew the Danger, Mischief, and Falseness of such Alterations.

Judge-Advocate then read the Letter of the 24th of July, which is as follows:

Victory, at Sea, Five P.M. 24th July, 1778.

“ S I R,

“ I dispatched the *Peggy* with my Letter to you of Yesterday Afternoon, and about an Hour after she left me the *French* Fleet tacked, and stood towards the King's Fleet, the Wind at W. N. W. As Night was so near, and Action in the Night always to be avoided, I brought the Fleet to with the Larboard Tack, leaving the Option in the *French*. It blew very hard in the Western Quarter great Part of the Night, and in the Morning the *French* Fleet was seen to the N. W. one of their Ships crippled in her Foretopmast, one of Vice-Admiral Sir *Hugh Palliser's* Division in the Loss of a Maintop-sail-yard. The *French* have been in the Wind's Eye all Day, and have had the Choice with them constantly to come to Action. Both Fleets are now standing to the S. W. *Ushant* bearing S. 54° 00', E. 22 Leagues. The *French* spread with their Frigates so greatly, that I should fear single Ships attempting to join the Fleet under my Command would run much Risk of being intercepted.

I am,

S I R,

Your most obedient

humble Servant,

A. KEPPEL.

“ P. S. We count the *French* Forty Sail, great and small.

A. KEPPEL.”

Philip Stephens, Esq.

Prosecutor.

The Admiral having signified to the Court, that he intends to call for Evidence to prove the Falseness of the Additions in the *Robuste's* Log-book, it is a Justice due to the Character of Captain *Hood*, that I should entreat that the Court will, in case of any such Attack, give Captain *Hood* an Opportunity of justifying himself.

Prisoner.

The Court will do what is just and right in such Circumstances.

Prosecutor.

Mr. President, I have now finished my Evidence. I have prepared a few Words by way of Address to the Court, which I desire the Judge-Advocate may be permitted to read.

Prisoner.

Mr. President, The Evidence on the Part of the Accusation being now closed, I trust it is not presumptuous in me to declare, that I do not resist the Prosecutor's Claim to address the Court by a Speech, from any Imagination of Danger to me; but as I have never known or heard of such an Attempt in any Court-martial before, and such Permission may be attended with ill Consequences in other Cases, that may be governed by the Precedent of this, I trust that my Cause, which is sufficiently new in many Respects, will not be distinguished by any such Innovation.

Prosecutor.

Conceiving myself intitled to address the Court at the Close of the Evidence for the Crown, I cannot consent to waive it, but must take the Opinion of the Court.

Prisoner.

I mean that my Accuser has no Right to make a Speech as to the Merits of the Case in any Part of this Cause.

The Court retired, and upon their Return the Judge-Advocate read as follows:

“ It not occurring to the Recollection of any of the Members, that it has ever been the Usage at Courts-martial to admit any Thing on the Part of the Accuser, after declaring he had gone through all the Witnesses he should produce in Support of the Charge, it is on this Occasion agreed, That the Paper now offered by the Accuser cannot be admitted.”

Adjourned, being Three o'Clock, till To-morrow at Ten o'Clock.

TWENTY-FIRST DAY.

SATURDAY, the 30th of JANUARY, 1779.

COURT met according to Adjournment.
The Prisoner called in, and Audience admitted.

The Prisoner began his Defence, which he read, and is as follows :

Mr. President, and Gentlemen of the Court,

I AM brought before you, after Forty Years Service, on the Charge of an Officer under my Command, for a Variety of Offences; which, if true or probable, would be greatly aggravated by the Means I have had, from a long Experience, of knowing my Duty, and by the strong Motives of Honour, which ought to have incited me to perform it to the very utmost Extent of my Ability.

Sir *Hugh Palliser*, an Officer under my Orders, conceives that I have acted very irregularly and very culpably in the Engagement with the *French Fleet* on the 27th of *July* last; so very irregularly, and so very faultily, that I have tarnished the Lustre of the Navy of *England*.

Possessed with this Opinion, on our Return to Port after the Action, he has a Letter from the Lords of the Admiralty put into his Hands, giving me, in the most explicit Terms, his Majesty's Approbation, for a Conduct which he now affects to think deserves the utmost Disapprobation and the severest Censure; and he, with the other Admirals and Captains of the Fleet, to whom it was likewise communicated, perfectly acquiesces in it.

With the same ill Opinion of my Conduct in his Bosom, he goes to Sea again under my Command; he goes to Sea under me, without having given the least Vent to his Thoughts, either by Way of Advice to myself, or of Complaint to our common Superiors.

He afterwards corresponds with me in Terms of Friendship; and in that Correspondence he uses Expressions which convey a very high Opinion of my Disinterestedness, and of my Zeal for the Service.

After all this I come home; I am received by his Majesty with the most gracious Expressions of Favour and Esteem; and I am received in the most flattering Manner by the First Lord of the Admiralty.

Several Weeks pass—when at length, without giving me any previous Notice, the Board of Admiralty send me Five Articles of Charge, on which they declare their Intention of bringing me to my Trial. These Charges are brought by Sir *Hugh Palliser*; who nearly at the same Time publicly declared, that he had taken this Step from an Opinion, that he himself lay under an Imputation of Disobedience to my Orders, and that this Imputation was countenanced by me.

I may say without the least Hesitation, that if I should be censured on such a Charge (which in this Court and with my Cause I think impossible), there is an End of all Command in the Navy. If every subordinate Officer can set up his Judgment against that of his Commander in Chief, and, after several Months of insidious Silence, can call him to Trial, whenever he thinks it useful for the Purpose of clearing away Imputations on himself, or in order to get the Start of a regular Charge, which he apprehends may possibly be brought on his own Conduct—there can be no Service.

If the Charges of my Accuser could be justified by his Apprehensions for himself, he has taken Care to prove to the Court, that he had very good Reason for his Fears; but if these Charges are to be considered as supported upon any rational Ground, with regard to the Nature of the Offence, or any satisfactory Evidence with regard to the Facts, as against me—he makes that Figure, which, I trust in God, all those who attack Innocence will ever make.

In your Examination into that Judgment, which my Officer, in order to depreciate my Skill and to criminate my Conduct, has thought proper to set up against mine, you have very wisely, and according to the evident Necessity of the Case, called for the Observations and Sentiments of all the Officers who have served in the late Engagement, so far as they have been brought before you by the Prosecutor. I take it for granted you will follow the same Course with those that I shall produce. If this should not be done, an Accuser (according to the Practice of mine), by the Use of leading Questions—by putting Things out of their natural Order—by confounding Times, and by a perplexed Interrogatory concerning

cerning an infinite Number of Manœuvres and Situations, might appear to produce a State of Things directly contrary to the Ideas of those who saw them with their own Eyes. I am astonished, that, when one Officer is accused by another of Crimes, which, if true, must be apparent to a very ordinary Observation and Understanding, that any Witness should, on being asked, refuse to declare his free Sentiments of the Manner in which the Matters to which he deposes have appeared to him. I never wished that any Gentleman should withhold that Part of his Evidence from Tenderneſs to me: what Motives the Accuſer had for objecting to it, he knows. The plainest and fullest ſpeaking is beſt for a good Cauſe. The manifeſt View and Intention that Things are done with, conſtitute their Crime or Merit. The Intentions are inſeparably connected with the Acts; and a Detail of Military or Naval Operations, wholly ſeparated from their Deſign, will be Nonſenſe. The Charge is read to a Witneſs, as I apprehend, that he may diſcern how the Facts he has ſeen agree with the Crimes he hears charged, otherwiſe I cannot conceive why a Witneſs is troubled with that reading. The Court can hardly enter fully into the Matter without ſuch Information; and the World out of our Profeſſion, cannot enter into it at all. Theſe Questions, I am informed, are properly Questions of Fact; and I believe it. They are perfectly conformable to the Practice of Courts-Martial. But if they were Questions to mere Opinion, yet the Court, not the Witneſs, is answerable for the Propriety of them. Maſters have been called here by the Proſecutor (and the Propriety not diſputed) for mere Opinions concerning the Effect of chacing on a Lee Shore. In higher Matters, higher Opinions ought to have Weight; if they ought, there are none more capable of giving the Court Information than thoſe who are ſummoned here; for I believe no Country ever was ſerved by Officers of more Gallantry, Honour, Ability, and Skill in their Profeſſion. You are a Court of Honour as well as of ſtrict Martial Law. I ſtand here for my Fame, as well as for my Life, and for my Station in the Navy. I hope therefore, that in a Trial, which is not without Importance to the whole Service, you will be ſo indulgent as to hear me with Patience, whiſt I explain to you every Thing that tends to clear my Reputation as a Man, as a Seaman, and as a Commander. I will open it to you without any Arts; and with the plain Freedom of a Man bred and formed as we all are. As I am to be tried for my Conduct in Command, it is proper I ſhould lay before you my Situation in that Command, and what were my Motives for the ſeveral Acts and Orders on account of which I ſtand charged. I muſt beg leave to make ſome Explanation of theſe, before I enter upon the Accuſations, Article by Article. To the Five ſpecial Articles of the Charge, you may depend upon it, I ſhall give full minute, and ſatisfactory Answers—even on the narrow and miſtaken Principles on which ſome of them are made. But I beg Leave to point out to you, that there is a general falſe Suppoſition that runs through the Whole. In cenſuring me for Miſconduct and Neglect of Duty, my Accuſer has conceived very miſtaken Notions of what my Duty was; and on that bad Foundation he has laid the whole Matter of his Charge.

I think myſelf particularly fortunate, in being able to make out by Evidence at this Diſtance of Time, with ſo much Exaſtneſs as I ſhall do, the various Movements which were made or ordered in the Action of the 27th of July. It is a Piece of good Fortune which cannot often happen to a Commander in Chief in the ſame Circumſtances. In an extenſive naval Engagement, and in the Movements preparatory to it; ſubordinate Officers, if they are attentive to their Duty, are fully employed in the Care of their own particular Charge; and they have but little Leiſure for exact Obſervation on the Conduct of their Commander in Chief. It is their Buſineſs to watch his Signals, and to put themſelves in a Condition to obey them with Alacrity and Effect. As they are looking towards one Thing, and he is looking towards another, it is always a great Chance whether they agree, when they come to form an Opinion of the whole.

You are ſenſible, Gentlemen, that one of the Things which diſtinguiſh a Commander is to know how to catch the proper Moment for each Order he gives. He is to have his Eye upon the Enemy. The reſt ought to have their Eyes on him. If thoſe ſubordinate Officers who are inclined to find Fault with him, do not mark the Inſtant of Time with the ſame Preſiſion which he does, their Judgment will often be erroneous; and they will blame where perhaps there is the greateſt Reaſon for Commendation.

Befides, it muſt be obvious, when we conſider the Nature of general Engagements, that in the Multitude of Movements that are made, and the Variety of Poſitions in which Ships are ſucceſſively found, with regard to one another, when in Motion over a large Space (to ſay nothing of the Smoke), Things ſcarcely ever appear exactly in the ſame Manner to any Two Ships. This occasions the greateſt Perplexity and Confuſion in the Accounts that go abroad, and ſometimes produces abſolute Contradiſtions between diſferent Relators, and that too without any intentional Fault in thoſe who tell the Story. But wherever the Commander in Chief is placed, *that* is the Center of all the Operations: *that* is the true Point of View from which they muſt be ſeen by thoſe who examine his

Conduct;

Conduct; because his Opinion must be formed, and his Conduct regulated by the Judgment of his Eye upon the Posture in which *he* sees his Objects, and not from the View which another in a different and perhaps distant Position has of them; and in Proportion as he has judged well or ill upon that particular View, taken from that particular Position (which is the only Point of Direction he can have), he deserves either Praise or Censure.

On these Principles I wish my Manœuvres to be tried, when the proper Consideration is, whether they have been unskilfully conceived, or as the Charge expresses it, in an unofficer-like Manner.

But my Reasons for preferring any one Step to another stand upon different Grounds. All that he charges as Negligence was the Effect of Deliberation and Choice; and this makes it necessary for me to explain as fully, as I think it right to do, the Ideas I acted upon.

I am not to be considered in the Light in which Sir *Hugh Palliser* seems to consider me, merely as an Officer with a limited Commission, confined to a special Military Operation, to be considered upon certain Military Rules, with an Eye towards a Court Martial, for my Acquittal or Condemnation, as I adhered to those Rules, or departed from them. My Commission was of a very different Sort: I was intrusted with ample discretionary Powers for the immediate Defence of the Kingdom. I was placed, in some Sort, in a Political as well as a Military Situation; and though, at my own Desire, for the Purposes of Uniformity and Secrecy, my Instructions came to me through the Admiralty alone, yet Part of them originated from the Secretary of State as well as from the Board. Every Thing which I did as an Officer, was solely subservient and subordinate to the great End of the national Defence. I manœuvred; I fought; I returned to Port; I put to Sea; just as it seemed best to me for the Purpose of my Destination. I acted on these Principles of large Discretion; and on those Principles I must be tried. If I am not, it is another Sort of Officer, and not one with my Trust and my Powers that is on Trial.

It is undoubtedly the Duty of every Sea Officer to do his utmost to take, sink, burn, and destroy the Enemy's Ships wherever he meets them. Sir *Hugh Palliser* makes some Charge on this Head, with as little Truth, Reason, or Justice, as on any of the others. He shall have a proper Answer in its proper Place; that is, when I come to the Articles. But in Justice to the Principles which directed me in my Command, I must beg leave to tell you, that I should think myself perfectly in the Right, if I postponed, or totally omitted that Destruction of Ships in One, in Two, or in Twenty Instances, if the Pursuit of that Object seemed to me detrimental to Matters of more Importance. Otherwise it would be a Crime for a Commander, entrusted with the Defence of the Kingdom, to have any Plan, Choice, or Foresight in his Operations. I ought to conduct myself, and I hope I did, in each Particular, by my Judgment of its probable Effect on the Issue of the whole Naval Campaign, to which all my Actions ought to have a Relation. Without attending to that Relation, some Particulars of my Conduct on the 27th and 28th of *July* cannot appear in the Light which I imagine they are fairly intitled to; and some Circumstances of my Lenity towards Sir *Hugh Palliser*, will incur a Censure they do not deserve.

I have reflected again and again on that Business; and if I were to be once more in that Situation, I am persuaded, that I should act in all Respects very much in the same Manner. I have done my best and utmost, not merely to comply with an Article of War (I should be ashamed that such a Thing at such a Time could have engaged my Thoughts), but to defend the Kingdom, and I have Reason to thank God, that whatever Obstructions I met with in Service, or whatever Slanders and Accusations have followed me afterwards, the Kingdom has been defended.

My Capacity may be unequal to the Trust which was placed in me. It is certainly very unequal to the warm Wishes I have ever felt for the Service of my Country. Therefore, if I had intrigued, or solicited the Command, or if I had bargained for any Advantage on accepting it, I might be blamed for my Presumption. But it came to me entirely unfought; and on accepting it, I neither complained of any former Neglect, nor stipulated for any future Gratification.

It is upwards of Two Years ago, that is, in *November 1776*, that I received a Message from Lord *Sandwich*, brought to me by Sir *Hugh Palliser*; that the Appearance of Foreign Powers, in our Disputes, might require a Fleet at home, and that he had his Majesty's Orders to know, whether I would undertake the Command. I said, that I was ready to attend, and give my Answer in Person to the King. Being admitted into the Closet, I gave such an one as seemed satisfactory to his Majesty; and having delivered my Opinions with Openness, I ended with a Declaration of my Willingness to serve him, in the Defence of this Country and its Commerce, whenever I should be honoured with his Commands, and as long as my Health permitted.

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The Appearance on the Part of Foreign Powers not continuing (I suppose) to give so much Alarm, I heard no more of the Command from *November 1776 to February or March 1778*; at that Time I had Hints conveyed to me, that I might soon be wanted. I was as ready to obey the King as I had been Sixteen Months before; and when required to serve, I had Two or Three Audiences of his Majesty before I left *London* finally to hoist my Flag. I must remark, that I took the Freedom to express to his Majesty, that I served in Obedience to *his* Commands; that I was unacquainted with his Ministers, as Ministers; and that I took the Command as it was, without making any Difficulty, and without asking a single Favour; trusting to his Majesty's good Intentions, and his gracious Support and Protection.

Circumstanced as I was, I could have no sinister and no ambitious Views in my Obedience. I risked a great deal, and I expected nothing. Many Things disposed me rather to seek my Ease than any new Employment, and gave me a very natural Reluctance to put a Situation, so difficult to mend, to any new Hazard.

That Hazard, Gentlemen, is very great to a Chief Commander, who is not well supported at Home. The greater the Command, and the larger the Discretion, the more liable the Commander is, in the Course of Service, to hasty, ignorant, envious, or mutinous Objections to his Conduct; and if he has not a candid and equitable Acceptance of his Endeavours at Home, his Reputation may be ruined. His Successes will be depreciated, and his Misfortunes, if such should befall him, will be turned into Crimes. But the Nation was represented to me, by those who ought best to know its Condition, as not in a very secure State. Although my Forty Years Endeavours were not marked by the Possession of any one Favour from the Crown (except that of its Confidence in Time of Danger), I could not think it right to decline the Service of my Country.

I thought it expedient to lay before you a true State of the Circumstances under which I took the Command, that you may see that, if I am that incapable and negligent Officer which this Charge represents me, I did not intrude myself into Command; that I was called to it by the express Orders of my Sovereign; that these Orders were conveyed to me by his Chief Minister of the Marine, with great seeming Concurrence and Approbation; that the Messenger (who also appeared to be perfectly pleased with his Errand), was no other than Sir *Hugh Palliser*, my Accuser, who ought to have been a Judge of my Ability from a very long Acquaintance; and that, lastly, this was no Matter of Surprise and Hurry, since they had Sixteen Months Time to consider and canvass my Fitness for a great discretionary Trust, before they placed it in my Hands.

If I gave no just Cause of Doubt about my real Character before my Appointment, I gave as little Cause of Uneasiness afterwards.

From the Moment of my taking the Command, I laid down to myself one Rule, which, in my Opinion, where there are honest Intentions on all Sides, does more to ensure Success to Service, than almost any other that can be conceived, which was, "*To make the best of every Thing.*" The whole Fleet will bear me Witness, that it was not my Custom to complain, though it is generally thought good Policy to be very exact by Way of Precaution. If any Thing was defective, I stated it in Confidence, and with good Humour, to the First Lord of the Admiralty.

I received my Supplies with Acknowledgment; what could not be helped, I concealed. I made no Noise, nor encouraged, much less excited any Murmurings in or out of the Fleet. I corresponded with the Noble Earl at the Head of the Admiralty; and I did every Thing with Reference to him, exactly in the same Way as if my best and dearest Friends were in that Department. Having none but the plainest Intentions, I was much more willing to take any Blame upon myself, than to lay it upon those who sent me out, or on those who served under me. I was open and unguarded. In general I studied my Language very little, because I little suspected that Traps would be laid for me in my Expressions, when my Actions were above Reproach.

I very soon found how necessary it was for one in my Situation to be well supported by Office. On my first going to *Portsmouth*, which was in *March* last, I was made to believe, that I should see a strong and well appointed Fleet ready for Sea. An Opinion of that Kind was circulated very generally. There were not more than Six Ships of the Line assembled, and in any Condition to go upon Service. Of them, all I shall say is, that on reviewing them with a Seaman's Eye, they gave me no Pleasure. Whilst I continued at *Portsmouth*, I believe Four or Five more arrived. I returned to Town without making any Noise—I represented amicably this State of Things. I was told, that the Ships were collecting from other Ports, and from Sea; and I must say, that from that Time forward great Diligence was used—as much, I believe, as was possible. If there had not, we never could have failed, even with the Force we went out with.

On the Thirteenth of *June* I set Sail from *St. Helens* with Twenty Ships of the Line, well enough equipped, that is, neither of the best nor the worst I had seen.

I was hardly on my Station, when a new Occasion occurred, to shew me how much a Commander, entrusted as I was, must take upon himself, how much he must venture on his own Discretion, and how necessary it is for him to have a proper Support. The Circumstances of my falling in with the *French* Frigates *Pallas* and *Licorne*, and of the Chace and the Engagement with the *Belle Poule* (so honourable to Captain *Marshall*), are fresh in your Memories. I undertook the Affair at my own Risque; War had not been declared, nor even Reprisals ordered. My Situation was singular. I might be disavowed, and a War with *France* laid to the Account of my Rashness.

There was not wanting some Discourse of that Tendency among People whose Opinions are of Moment. I represented what I had done; and to this Hour I have not received one Syllable of direct or official Approbation of my Conduct.

I found, however, that the taking of the Ships was important to the State. The Papers I found in them, and the Intelligence I received by that Means, filled me with the most serious Apprehensions. I was on the Enemy's Coast with Twenty Sail of the Line. There were Thirty-two in *Brest* Road and *Brest* Water, and Frigates more than triple my Number.

My Orders to sail with Twenty Ships could not have been upon a Supposition of my having to deal with such a Force. I know what can be done by *English* Officers and *English* Seamen, and I trust to it as much as any Man. I should not be discouraged by some Superiority against me in Ships, Men, and Metal; but I have never had the Folly to despise my Enemy. I saw, that an Engagement under such Circumstances of decided Superiority on the Part of *France*, would hazard the very Being of this Kingdom.

If our Fleet should be destroyed, it was evident that the *French* must become Masters of the Sea, for that Campaign at least.

Whether we could ever repair the Loss, is not very clear to me, when I consider the State of our naval Stores at that Time, and the extreme Difficulty of a Supply, as long as the *French* should continue superior in the Channel.

It is impossible to say to what such a Calamity might not lead. I was filled with the deepest Melancholy I ever felt in my Life. I found myself obliged to turn my Back on *France*; but I took my Resolution—I again risked myself on my own Opinion—I quitted my Station. My Courage was never put to such a Trial as in that Retreat; but my firm Persuasion is, that the Country was saved by it.

Those in Power, who must have understood the State of the Fleet and of the Kingdom, were best able to discern the Propriety of my Conduct. But I was permitted to go out again in the same important Command—very unworthy of the Trust, if I had done amiss; very deserving of Commendation and Thanks, if at my own Risque I had preserved the Country from no slight Danger. One or other of these was certainly the Case. But the Fact is, that I was continued in the Command—but did not then receive, nor have I yet received, any more than I had on the former Occasion of taking the *French* Ships, one Word of official Approbation.

All these discouraging Circumstances did not abate the Zeal I felt for the Safety of my Country, or disgust me with its Service, or disturb my Temper. On my Return to *Portsmouth* I made no Complaint. I did every Thing to stifle Discontent, and to get forward for Sea again, without divulging the true Situation of Affairs, although I found myself, in Publications which are considered as countenanced by Authority, most grossly abused, and threatened with the Fate of Admiral *Byng*.

I had returned to *Portsmouth* on the 27th of *June*, and on the 9th of *July*, finding my Fleet made up to Twenty-four Ships of the Line of Battle, with Four Frigates and Two Fireships, I sailed again, in Obedience to my Instructions, trusting to such Reinforcement as I was given to expect would join me.

At *Plymouth*, off the *Lizard*, and at Sea, by several Reinforcements of Ships, manned as the Exigency would permit, the Fleet was made up to Thirty Sail of the Line. After this, although I was much short of a proportionable Number of Frigates, and must naturally be subject to many Inconveniencies from that Want, I had, on the whole, no just Cause for Uneasiness. The greatest Part of the Ships were in good Condition, and well appointed, and where any Thing was wanting, the Zeal of the Commanders abundantly supplied it.

The Appearance of the *French* Fleet confirmed the Ideas upon which I had returned to *Portsmouth*; for on the 8th of *July*, the Day before I left *St. Helens*, they sailed out of *Brest* Thirty-two Sail of the Line. On the 23d the Fleets of the two Nations first came in Sight of each other. I believe the *French* Admiral found me much stronger than he expected; and from thence he all along shewed, as I conceived, a manifest Disinclination to come to an Engagement. I do not say this, as meaning to call his Courage in question—Very far from it. I am certain that he is a Man of great Bravery; but he might have many very reasonable Motives for avoiding a decisive Action. Many Objects of the *French*,
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and those very important, might be obtained without a Battle. On my Part, I had every Motive which could make me earnest to bring it on, and I was resolved to do so whenever and by whatever Means I could. I should be criminal indeed, if I had not, for I had every Motive for desiring to press on an Action. The greatest Body of the *British* Trade was then on its Return Home. Two *East-India* and Two *West-India* Fleets of immense Value were hourly expected. From the Course it was probable they would hold, and from the Situation of the *French* Fleet, they might be taken in my Sight, without a Possibility of my preventing it. Besides this, I know that Two Fleets, where one of them chooses to decline Battle, may be for a very long Time near one another, without any Means of bringing on an Engagement. I cannot be certain whether the Account I have read be quite exact; but it should appear by that Account, that in King *William's* Reign Admiral *Russell* continued for Two Months almost in the daily View of the *French* Fleet, without having it in his Power to fight them. I do not think the Thing at all impossible.

I had also other Reasons for the greatest Anxiety to bring on an Engagement, upon any Terms that I could obtain it. These Reasons are weighty, and they are founded in my Instructions. I gave Notice to the Admiralty, that I might find it useful to my Defence to produce those Instructions on my Trial. They communicated to me his Majesty's Pleasure thereupon, and informed me, that they could not consent that my Instructions should be laid before my Counsel, or be produced at the Court-Martial. I was much surprised at this Answer—as I conceived that those who were much better Judges than I could be of what was Matter of State, could never have thought of putting me in a Situation, which might compel me, in my Defence, to produce the Instructions under which I acted, when, at the same Time, they meant to refuse me the fair and natural Means of my Justification. It is my undoubted Right, if I think proper, to avail myself of them. On former Trials, they have been generally sent down with the Accusation, that the Conduct of the Admiral might be compared with his Instructions. But leaving the Admiralty to reflect on the Propriety of their Conduct, it is my Part to take care of my own. I have always been willing to run any Hazard for the Benefit of the State. I shall not produce those Instructions—I have not even shewn them to my Counsel, nor communicated their Contents; but my declining to make use of my own Rights cannot in a like Case hereafter affect the Right of any other Man. The World will judge of the Wisdom and Equity of ordering Trials under such Circumstances.

On the 27th of *July* I came to an Action with the *French*. They were beaten, and obliged to retire into their own Port. No one can doubt but a Commander in Chief, who is to reap the principal Share of the Glory, will be earnest to have his Victory as complete as possible. *Mine did not* answer to my Wishes, nor to my just Expectations. I was fully resolved to renew the Engagement. Why it was not renewed, will appear when I come to the Particulars of the Charge.

As to my Conduct after the Engagement, I might have pursued a fruitless and a most hazardous Chace of some few Ships (I know not to this Hour with Certainty what they were, nor does my Accuser), if I had had my Mind filled with Notions unworthy of my Station. I might easily have paraded with my shattered Fleet off the Harbour of *Brest*. I chose rather to return to *Plymouth* with all Expedition, to put myself once more in a Condition to meet the Enemy, and defend the Kingdom. But on my Return, I took care to leave Two Men of War of the Line on a Cruise to protect the Trade. By the Vigilance of the Commanders, and the happy Effect of the late Advantage, the expected Fleets all came in safe.

At *Plymouth*, I lost no Time, and omitted no Means of putting myself in a State fit for Action. I did every Thing to promote an unanimous Exertion; and I found my Endeavours well seconded by all the Admirals and Captains of the Fleet. This Benefit I acquired, by avoiding a Retrospect into the Conduct of the Vice-Admiral of the Blue; for if I had instituted an Enquiry or Trial, it would have suspended the Operations of the whole Fleet, and would have suspended them in the Midst of the Campaign, when every Moment was precious, and the Exertion of every Officer necessary. The Delay which the present Court Martial has occasioned to the Service, even at this Time, is evident to all the World. How much more mischievous would it have been at that Period?—I was sensible of it, or rather to speak more correctly, my Mind was so fully taken up with carrying on the great Service which was intrusted to my Care, that I could not admit the Thought of mispending my own Time, and wasting the Flower of the *British* Navy in attending on a Court-Martial.

My Letter to the Admiralty was written in the Spirit which directed my Conduct at *Plymouth*. All my Letters were written in the same Spirit. My Letter published in the *Gazette*, has been brought before this Court, for the Purpose of convicting me of Crimes, by the Person whose Faults it was intended to cover. He has attempted, very irregularly in my Opinion, to call upon Witnesses for their Construction of my Writing. No one
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has a Right to explain my Meaning, where it may be doubtful, but myself; and it is you, Gentlemen, who are to judge whether my Explanation is fair.

That Letter (as far as it goes) is an Account of the Action, strictly true. It is indeed very short, and very general. But it goes as far as I intended it should. It commends Sir *Hugh Palliser*. It does what I meant to do. I meant to commend his Bravery (or what appeared to me as such) in the Engagement. As he stood high in Command, to pass over one in his Station, would be to mark him. It would have conveyed the Censure I wished for such good Reasons to avoid; and I should have defeated the one great Object I had in View, the Defence of the Nation.

In that Letter, I expressed also my Hopes of bringing the *French* Fleet to Action in the Morning:—I had such Hopes; and my Accuser, even in the second Edition of his Log-book, shews, that I was not wholly ungrounded in my Expectations; since he has recorded himself as of the same Opinion. I said, that I did not interrupt the *French* Fleet that Evening in the Formation of their Line. I shall shew you by Evidence (if it should not have already fully appeared) that I was not able to do it; and that any random Firing from me, under my Circumstances, would have been vain against the Enemy, and a disgraceful Trifling with regard to myself.

You have seen my Expressions, and such is their Meaning with regard both to the *French* and to Sir *Hugh Palliser*, so far as they applied to the particular Times to which they severally belonged. But there was an *intermediate Time* with regard to both, of which, when I wrote my Letter, I gave no Account. I intended to conceal it. I do not conceive that a Commander in Chief is bound to disclose to all Europe, in the Midst of a critical Service, the real State of his Fleet, or his Opinion of any of his Officers. He is not, under such Circumstances, bound to accuse a *British* Admiral. To me, such an Accusation, under almost any Circumstances, is a very serious Matter. Whilst a Possibility of Excuse for an Officer remains in my Mind, I am in my Disposition ready to lay hold of it; and I confess to you, that until Sir *Hugh Palliser* himself had brought out to this Court all the Particulars, I attributed much more to his Misfortune or Mistake, than I now find myself authorised to do; nor did I think his Conduct Half so exceptionable as he himself has proved it. After the Engagement, *he* never thought fit to explain to me the Reasons of his not bearing down into my Wake, to enable me to renew the Action, and I did not think fit to enquire into them.

I apprehend, that a Power of passing over Faults or Mistakes in Service (into which the very best Officers may be surprised) to be sometimes as necessary, if not to Discipline, yet to the End of all Discipline, the Good of the Service, as any Punishment of them can possibly be: And one of the ill Effects of this Prosecution will be, I fear, to terrify a Commander in Chief out of one of the most valuable Parts of his Discretion. By using the Discretion which I thought was in me, I preserved Concord in the Fleet, Promptitude in the Service, and Dignity to the Country. In my Opinion, any Complaint of such a Magnitude would have produced infinite Mischiefs. Nobody can imagine that, in that Moment, an Accusation of a Vice-Admiral, who was besides a Lord of the Admiralty, could be undertaken without a capital Detriment to our naval Operations, and even to the Quiet of the Public.

My Letter was written solely upon the Principles which I have now honestly and faithfully laid before you, and which I submit to your Judgment. If I have been more indulgent than was wise, the Public has had the Benefit, and all the Trouble and Inconvenience of my Indiscretion has fallen upon myself. I never had a more troublesome Task of the Sort, than in penning that Letter, and it has ill answered my Pains. If I have not shewn myself able at Concealment, it is a Fault for which I hope I shall not lose much Credit with this Court-Martial. I shall not be very uneasy, if I have been thought to have wrote a bad Letter, if I shall be found, as I trust I shall be found, to have done my Duty in fighting the Enemy.

The Intrusion of my Letter into the Trial, has made it necessary for me to explain it. I now proceed with the Account of my Conduct.

I got ready for Sea again with my usual Temper and Disposition to accommodate. After this, I kept the Sea as long as I could. The *French* Fleet carefully avoided my Station. I could obtain no distinct Intelligence of them, though I omitted no Means to procure it. In consequence of this their Desertion of the Seas, their Trade fell into the Hands of our Privateers, to a Number and Value that I believe was never equalled in the same Space of Time. His Majesty was pleased to speak of it in his Speech from the Throne; and to attribute it to the good Conduct of some of his Officers.

When I considered this, when I considered the direct Approbation of my Conduct, and the Circumstances which attended my Appointment, it was with Difficulty I persuaded myself that I was awake; when I found that I was treated as a Criminal, and ordered, without the least Ceremony or previous Enquiry, to be tried at a Court Martial; on the

Accusation of my Officer; my old Friend; one, over whose Faults I had so lately cast a Veil; the very Person who was the Messenger and Congratulator of my original Appointment. I acknowledge, it was for some Time before I could sufficiently master my Indignation, and compose myself to that Equality of Temper with which I came hither; and with which I have heard such shocking and reproachful Matter and Words read to my Face, in the Place of Support I was made to look for. I feel very much inward Peace at present, and the Event I consider with much less Concern for myself than for the Service. Your Judgment, I am fully persuaded, will be wise and well weighed; and such as will be of Credit to yourselves, and of Advantage and Encouragement to that Part of the Military which is the most interesting to this Kingdom. On my Part, I trust I shall entitle myself not only to an Acquittal, but to an honourable Reparation at your Hands, for the malicious Calumnies contained in the Charge against me.

Thus much I have said as to the general Matter, which has arisen on the Trial, and the Circumstances by which that Trial has been brought on, as well as to the Motives and Principles which regulated the Discretion that I conceive was in me.

If these Motives were probable and likely to be real, I cannot be Guilty of the criminal Negligence and Want of Knowledge in my Profession with which I stand charged. As to the Charges themselves, let the first Article be read again, and I will answer to it.

The Judge Advocate then read the first Article in the Charge, to which the Prisoner read the following Answer.

The First of the Charges contained in the First Article is:

“ That on the Morning of the 27th of July 1778, having a Fleet of Thirty Ships
“ of the Line under my Command, and being then in the Presence of a French
“ Fleet of the like Number of Ships of the Line, I did not make the necessary
“ Preparations for Fight.”

To this I answer, that I have never understood Preparations for Fight, to have any other Meaning in the Language and Understanding of Seamen, than that each particular Ship under the Direction and Discipline of her own Officers, *when in Pursuit of an Enemy*, be in every Respect cleared and in Readiness for Action, the contrary of which, no Admiral of a Fleet, without reasonable Cause, will presume.—*And as from the Morning of the 24th, when the French Fleet had got to Windward, to the Time of the Action, the British Fleet was in unremitting Pursuit of them*, it is still more difficult to conceive that any Thing more is meant by this Charge, than what is immediately after conveyed by the Charge that follows it—namely:

“ That on the same Morning of the 27th, I did not put my Fleet into a Line of
“ Battle, or into any Order, proper either for receiving or attacking an Enemy of
“ such Force.”

By this second Part of the Charge, I feel myself attacked in the Execution of that great and broad Line of Discretion, which every Officer, commanding either Fleets or Armies, is often obliged, both in Duty and Conscience, to exercise to the best of his Judgment; and which, depending on Circumstances and Situations infinitely various, cannot be reduced to any positive Rule of Discipline or Practice; a Discretion, which I will submit to the Court, I was peculiarly called upon by the strongest and best Motives to exercise, and which in my public Letter to the Board of Admiralty, I openly avowed to have exercised.—I admit, that on the Morning of the 27th of July, I did not put my Fleet into a Line of Battle—because I had it not in my Choice to do so, consistent with the Certainty or even Probability of either giving or being given Battle, and because if I had scrupulously adhered to that Order, in which, if the Election had been mine, I should have chosen to have received or attacked a willing Enemy, I should have had no Enemy either to receive or to attack.

I shall therefore in Answer to this Charge, submit to the Court my Reasons for determining to bring the French Fleet to Battle at all Events, and shall shew that any other Order than that in which my Fleet was conducted, from my first seeing them, to the Moment of the Action, was incompatible with such Determination.

And in order to this, I must call the Attention of the Court to a retrospective View of the Motions of the Two Fleets, from their first coming in Sight of each other.

On my first discovering the French Fleet, at One o’Clock in the Afternoon of the 23d of July, I made the necessary Signals for forming my Fleet in the Order of Battle, which I effected towards the Evening, when I brought to by Signal, and lay till the Morning, when perceiving that the French Fleet had gained the Wind during the Night, and carried a pressed Sail to preserve it, I discontinued the Signal for the Line, and made the general

Signal to chace to Windward, in Hopes that they would join Battle with me, rather than suffer Two of their capital Ships to be entirely separated from them, and give me the Chance of cutting off a Third, which had carried away a Topmast in the Night, and which, but for a Shift of Wind, I must have taken. In this, however, I was disappointed, for they suffered Two of them to go off altogether, and continued to make every Use of the Advantage of the Wind.

This assiduous Endeavour of the *French* Admiral to avoid coming to Action, which from his thus having the Wind, was always in his Option, led me to believe he expected a Reinforcement—a Reflection which would alone have been sufficient to determine me to urge my Pursuit in as collected a Body as the Nature of such a Pursuit would admit of, without the Delay of the Line, and to seize the first Opportunity of bringing on an Engagement.

But I had other Reasons no less urgent:—

If by obstinately adhering to the Line of Battle, I had suffered, as I inevitably must, the *French* Fleet to have separated from me, and if, by such Separation, the *English* Convoys from the *East* and *West Indies*, which I have already stated in the Introduction to my Defence, to have been then expected Home, had been cut off, or the Coast of *England* had been insulted, what would have been my Situation? sheltered under the Forms of Discipline, I perhaps might have escaped Punishment, but I could not have escaped Censure—I should neither have escaped the Contempt of my Fellow-Citizens, nor the Reproaches of my own Conscience.

Moved by these important Considerations, supported by the Examples of Admiral *Russell*, and other great Naval Commanders, who in similar Situations had ever made strict Order give way to reasonable Enterprize, and particularly encouraged by the Remembrance of having myself served under that truly great Officer Lord *Hawke*, when rejecting all Rules and Forms, he grasped at Victory by an irregular Attack—I determined not to lose Sight of the *French* Fleet, by being outailed from preserving the Line of Battle, but to keep my Fleet as well collected as I could, and near enough to assist and act with each other, in case a change of Wind, or other favourable Circumstances, should enable me to force the Enemy to Action.

Such were my Feelings and Resolutions when the Day broke on the Morning of the 27th of *July*, at which Time the Fleet under my Command was in the following Position:—Vice-Admiral Sir *Robert Harland* was about Four Miles distant on the *Victory's* Weather-quarter, with most of the Ships of his own Division, and some of those belonging to the Center; and Vice-Admiral Sir *Hugh Palliser*, at about Three Miles Distance, a Point before the Lee-beam of the *Victory*, with his Mainfail up, which obliged the Ships of his Division to continue under an easy Sail.

The *French* Fleet was as much to Windward, and at as great a Distance, as it had been the preceding Morning, standing with a fresh Wind close hauled on the Larboard Tack, to all Appearance avoiding me with the same Industry as ever.

At this Time therefore I had no greater Inducement to form the Line, than I had on the Morning of the former Day, and I could not have formed it without greatly increasing my Distance from the *French* Fleet, contrary to that Plan of Operation which I have already submitted to the Judgment of the Court.

The Vice-Admiral of the Blue next charges,

“ That although my Fleet was already dispersed, and in Disorder, I, by making
 “ the Signal for several Ships of his Division to chace to Windward, increased
 “ the Disorder of that Part of my Fleet; and that the Ships were, in consequence, more scattered than they had been before; and that, whilst in this
 “ Disorder, I advanced to the Enemy, and made the Signal for Battle.”

In this Part of the Charge, there is a studious Design to mislead the Understanding; and by leaving out Times, and intermediate Events, to make the Transactions of Half a Day, appear but as One Moment.

It is, indeed, impossible to read it without being possessed with the Idea, that at Half past Five in the Morning, when I made the Signal for Six of the Ships of the Vice-Admiral of the Blue's Division to chace to Windward, I was in the immediate Prospect of closing with an Enemy approaching me in a regular Line, and all their Motions plainly indicating a Design to give Battle; instead of which, both the Fleets were then on the Larboard Tack; the Enemy's Fleet near Three Leagues to Windward, going off close by the Wind, with a pressed Sail; my Reason, therefore, for making that Signal, at Half past Five, was to collect as many of the Ships to Windward as I could, in order to strengthen the main Body of the Fleet, in case I should be able to get to Action, and to fill up the Interval between the *Victory* and the Vice-Admiral, which was occasioned by his being far to Leeward; and it is plain, that the Vice-Admiral must have himself understood

understood the Object of the Signal, since it has appeared in the Course of the Evidence³ that, on its being made, the *Formidable* set her Mainsail, and let the Reefs out of her Topsails; and indeed the only Reason why it was not originally made for the whole Division was, that they must have then chaced as a Division, which would have retarded the best going Ships, by an Attendance on the Vice-Admiral.

Things were in this Situation, when, about Nine, the *French Fleet* wore, and stood to the Southward, on the Starboard Tack; but the Wind, immediately after they wore about, coming more Southwardly, I continued to stand on till a Quarter past Ten, at which Time I tacked the *British Fleet* together by Signal; and soon after we were about, the Wind came some Points in our Favour to the Westward, which enabled us to lie up for a Part of them; but in a dark Squall, that almost immediately came on, I lost Sight of them for above Half an Hour; and when it cleared away, at Eleven o'Clock, I discovered that the *French Fleet* had changed their Position, and were endeavouring to form the Line on the Larboard Tack; which finding they could not effect, without coming within Gun Shot of the Van of the *British Fleet*, they edged down, and fired on my headmost Ships, as they approached them on the contrary Tack, at a Quarter after Eleven; which was instantly returned; and then, and not till then, I made the Signal for Battle.—All this happened in about Half an Hour, and must have been owing to the Enemy's falling to Leeward, in performing their Evolution, during the Squall, which we could not see; and, by that Means, produced this sudden and unexpected Opportunity of engaging them; as they were near Three Leagues ahead of me when the Squall came on.

If, therefore, by making the Signal for the Line of Battle, when the Van of my Fleet was thus suddenly getting within Reach of the Enemy, and well connected with the Center, as my Accuser himself has admitted, I had called back the Vice Admiral of the Red, the *French Fleet* might either have formed their Line complete, and have come down upon my Fleet while in the Confusion of getting into Order of Battle, or (what I had still greater Reason to apprehend) might have gone off to Windward, out of my Reach altogether; for even as it was, the Enemy's Van, instead of coming close to Action, kept their Wind, and passed hardly within Random Shot.

My Accuser next asserts, as an Aggravation of his former Charge,

“ That the *French Fleet* was in a regular Line, on the Tack which approached
“ the *British Fleet*, all their Motions plainly indicating a Design to give
“ Battle.

Both which Facts have already been contradicted by the Testimony of even his own Witnesses.—That the Enemy's Fleet was not in a regular Line of Battle, appeared by the *French Admiral* being out of his Station, far from the Center of his Line, and next, or very near, to a Ship carrying a Vice-Admiral's Flag, and from some of their Ship's being abreast of each other; and in One, as they passed the *English Fleet*, with other apparent Marks of Irregularity.—Indeed, every Motion of the *French Fleet*, from about Nine, when it went into the Starboard Tack, till the Moment of the Action, and even during the Action itself, I apprehend to be decisive against the alleged Indication of designing Battle.—For, if the *French Admiral* had really designed to come to Action, I apprehend he never would have got his Fleet on the contrary Tack to that on which the *British Fleet* was coming up to him, but would have shortened Sail, and waited for it, formed in the Line on the same Tack.—And even when he did tack towards the *British Fleet*, the alleged Indication is again directly refuted, by the Van of the *French Fleet* hauling their Wind again, instead of bearing down into Action, and by their hoisting no Colours when they began to engage. Notwithstanding these incontrovertible Truths, my Accuser imputes it to me, that a general Engagement was not brought on; but it is evident, from the Testimony of every Witness he has called, that a general Engagement was never in my Choice; and that so far from its being prevented, by my not having formed the Line of Battle, no Engagement, either general or partial, could have been brought on if I had formed it.—Indeed it is a Contradiction in Terms, to speak of a general Engagement, where the Fleet that has the Wind, tacks, to pass the Fleet to Leeward on the contrary Tack.

Such was the Manner in which, after Four Days Pursuit, I was at last enabled, by a favourable Shift of Wind, to close with the Fleet of *France*; and if I am justifiable on Principle, in the Exercise of that Discretion, which I have been submitting to your Judgment, of bringing, at all Events, an unwilling Enemy to Battle, I am certainly not called upon to descend to all the Minutiae of Consequences resulting from such Enterprize, even if such had ensued as my Accuser has asserted; but which his own Witnesses have not only failed to establish, but absolutely refuted. It would be an Insult on the Understanding of the Court, were I to offer any Arguments, to shew that Ships which engage, without a Line of Battle, cannot so closely, uniformly, and mutually support each other, as when
Circumstances

Circumstances admit of a Line being formed; because it is self-evident, and is the Basis of all the Discipline and Practice of Lines of Battle.—But, in the present Case, notwithstanding I had no Choice in making any Disposition for an Attack, nor any Possibility of getting to Battle otherwise than I did, which would be alone sufficient to repel any Charge of Consequence, Irregularity, or even Confusion, yet it is not necessary for me to claim the Protection of the Circumstances under which I acted; because no Irregularity, or Confusion, either existed, or has been proved; all the chasing Ships, and the whole Fleet, except a Ship or Two, got into Battle, and into as close Battle as the *French* Fleet, which had the Option, by being to Windward, chose to give them.—The Vice-Admiral of the Blue himself, though in the Rear, was out of Action in a short Time after the *Victory*; and so far from being left to engage singly and unsupported, was passed, during the Action, by Three Ships of his own Division, and was obliged to back his Mizentopfail, to keep out of the Fire of One of the largest Ships in the Fleet, which must have continued near him all the rest of the Time he was passing the *French* Line—as I shall prove she was within Three Cables-length of the *Formidable* when the Firing ceased.

The Prisoner called for the Second Article of the Charge; which being read by the Judge-Advocate, the Prisoner answered:

The Moment the *Victory* had passed the Enemy's Rear, my first Object was to look round to the Position of the Fleet which the Smoke had till then obscured from Observation, in order to determine how a general Engagement might best be brought on, after the Fleets should have passed each other.—I found that the Vice-Admiral of the Red, with Part of his Division, had tacked, and was standing towards the Enemy with Topgallant-sails set, the very Thing I am charged with not having directed him to do; but all the rest of the Ships that had got out of Action were still on the Starboard Tack, some of them dropping to Leeward, and seemingly employed in repairing their Damages: the *Victory* herself was in no Condition to tack, and I could not immediately wear and stand back on the Ships coming up astern of me out of the Action (had it been otherwise expedient) without throwing them into the utmost Confusion. Sir *John Ross*, who very gallantly tried the Experiment, having informed the Court of the momentary Necessity, he was under of wearing back again to prevent the Consequences I have mentioned, makes it unnecessary to enlarge on the probable Effect of such a general Manœuvre with all the Ships ahead. Indeed I only remark it as a strongly relative Circumstance, appearing by the Evidence of a very able and experienced Officer, and by no means as a Justification for having stood away to a great Distance beyond the Enemy before I wore, because the Charge itself is grossly false in Fact; the *Victory* had very little Way, while her Head was to the Southward, and although her Damages were considerable, was the first Ship of the Center Division that got round towards the Enemy again, and sometime before the rest were able to follow her; since even as it was, not above Three or Four were able to close up with her on the Larboard Tack; so that had it even been practicable to have wore sooner than I did, no good Purpose could have been answered by it, since I must only have wore the sooner back again to have collected the disabled Ships, which would have been thereby left still farther astern.

The *Formidable* was no otherwise left engaged with the Enemy during this short Interval, than as being on the Rear, which must always necessarily happen to Ships in that Situation, when Fleets engage each other on contrary Tacks; and no One Witness has attempted to speak to the Danger my Accuser complains of, except his own Captain, who, on being called upon to fix the Time when such Danger was apprehended, stated it to be before the *Formidable* opened her Fire, which renders the Application of it as a Consequence of the Second Charge, too absurd to demand a Refutation.

The Third Article of the Charge being called for, and read by the Judge-Advocate, the Prisoner answered:

As soon as I had wore to stand towards the Enemy, I hauled down the Signal for Battle, which I judged improper to be kept abroad till the Ships could recover their Stations, or at least get near enough to support each other in Action; and in order to call them together for that Purpose, I immediately made the Signal to form the Line of Battle ahead, a Cable's Length asunder; and the *Victory* being at this Time ahead of all the Center and Red Division, I embraced that Opportunity of unbending her Maintopfail, which was totally unserviceable; and, in doing which, the utmost Expedition was used, the Ships astern of me doing all they could, in the mean time, to get into their Stations, so that no Time was lost by this necessary Operation.

The *Formidable* was ahead of the *Victory* during this Period; it was her Station in the Line on that Tack; yet at the very Moment my Accuser dares to charge me with not calling the Ships together to renew the Attack, he himself, though his Ship was in a ma-

nageable Condition, as has appeared by the Evidence of his own Captain; and though he had wore, expecting, as he says, the Battle to be renewed, quitted his Station in the Front of that Line of Battle, the Signal for which was flying, passed to Leeward of me on the Starboard Tack, while I was advancing to the Enemy, and never came into the Line during the rest of the Day.

In this Situation, I judged it necessary that the Vice-Admiral of the Red, who was to Windward, and pushing forward on my Weather-bow with Six or Seven Ships of his Division, should lead on the Larboard Tack, in order to give Time to the Ships which had come last out of Action to repair their Damages, and get collected together; and the Signal appointed by the Thirty-first Article of the Fighting Instructions not being applicable, as the *French* Fleet was so nearly ahead of us, that by keeping close to the Wind we could only have fetched them, I made the *Proserpine's* Signal in order to have dispatched Captain *Sutton* with a Message to Vice-Admiral Sir *Robert Harland* to lead the Fleet on the Larboard Tack; but before he left the *Victory* with the Orders he had received, the *French* Fleet wore and stood to the Southward, forming their Line on the Starboard Tack, their Ships advancing regularly out of a collected Body, which they had got into from the Operation of wearing, and not from any Disorder or Confusion; though, had such Disorder or Confusion really existed, I could have derived no immediate Advantage from it, not having a sufficient Force collected to prevent their Forming, by an Attempt to renew the Attack. The *Victory* was at this Time the nearest Ship to the Enemy, with no more than Three or Four of the Center Division in any Situation to have supported her, or each other in Action. The Vice-Admiral of the Blue was on the Starboard Tack, standing away from his Station, totally regardless of the Signal that was flying to form the Line; and most of the other Ships, except the Red Division, whose Position I have already stated, were far astern, and Five disabled Ships at a great Distance on the Lee-quarter—Most of these Facts are already established by my Accuser's own Evidence, and I shall prove and confirm them all by the Testimony of that Part of the Fleet whose Situations will enable them to speak to them with Certainty. I trust they will convince the Court that I had it not in my Power to collect the Fleet together to renew the Fight at that Time, and that from their not being able to follow me, I consequently could not advance with them: That I did not shorten Sail, but only shifted an unserviceable one, when I was far ahead and the Ships unable to follow: That I did not haul down the Signal for Battle till it ceased to be capable of producing any good Effect: That during the whole Time I stood towards the Enemy, I endeavoured by the most forcible of all Signals, the Signal for the Line of Battle, to call the Ships together in order to renew the Attack: That I did avail myself of the Ships that were with the Vice-Admiral of the Red, as far as Circumstances admitted, and that I therefore did do the utmost in my Power to take, sink, burn, and destroy the *French* Fleet which had attacked the *British* Fleet.

The Fourth Article of the Charge was next read by the Judge-Advocate; to which the Prisoner answered:

The *French* Fleet having wore and begun to form their Line on the Starboard Tack, by the Wind, which, if they had kept, would have brought them close up with the Center Division, soon afterwards edged away, pointing towards Four or Five of the disabled Ships which were at a Distance to Leeward, and with evident Intention to have separated them from the rest of the Fleet; to prevent which I made the Signal to wear, and stood athwart their Van in a diagonal Course, to give Protection to those crippled Ships, keeping the Signal for the Line flying to form and collect the Fleet on the Starboard Tack, and as I had thus been obliged to alter my Disposition before Captain *Sutton* left the *Victory* with my former Message, I dispatched him with Orders to the Vice-Admiral of the Red, to form with his Division at a Distance astern of the *Victory* to cover the Rear, and to keep the Enemy in Check till the Vice-Admiral of the Blue should come into his Station with his Division in Obedience to the Signal. These Orders the Vice-Admiral of the Red instantly obeyed, and was formed in my Wake before Four o'Clock; when finding that while by the Course I steered to protect the crippled Ships, I was nearing the Enemy, the Vice-Admiral of the Blue still continued to lay to Windward, and by so doing kept his Division from joining me, I made the Signal for Ships to Windward to bear down into my Wake, and that it might be the better distinguished (both being Signals at the Mizzen-peak), I hauled down the Signal for the Line for about Ten Minutes, and then hoisted it again. This Signal for Ships to Windward to bear down he repeated, though he had not repeated that for the Line of Battle; but by not bearing down himself, he led the Ships of his Division to interpret his repeating it as requiring them to come into his Wake instead of mine.

Having now accomplished the Protection of the disabled Ships, and the *French* Fleet continuing to form their Line, ranging up to Leeward, parallel to the Center Division, my

only Object was to form mine in order to bear down upon them to renew the Battle; and therefore, at a Quarter before Five, after having repeated the Signal for Ships to Windward to bear down into my Wake with no better Effect than before, I sent the *Milford* with Orders to the Vice-Admiral of the Red, to stretch ahead and take his Station in the Line, which he instantly obeyed, and the Vice-Admiral of the Blue being still to Windward, with his Foretop-sail unbent, and making no visible Effort to obey the Signals which had been flying the whole Afternoon, I sent the *Fox* at Five o'Clock with Orders to him to bear down into my Wake, and to tell him that I only waited for him and his Division to renew the Battle; and while I was dispatching these Frigates, having before hauled down the Signal to come into my Wake, I put abroad the Signal for all Ships to come into their Stations, always keeping the Signal for the Line flying. All this producing no Effect on the Vice-Admiral of the Blue, and wearied out with fruitless Expectations, at Seven o'Clock I made the Signal for each particular Ship of the Vice-Admiral of the Blue's Division to come into her Station, but before they had accomplished it, Night put an End to all further Operations.

It may be observed, that amongst these Signals I did not make the *Formidable's*; if the Vice-Admiral chuses to consider this as a culpable Neglect, I can only say, that it occurred to me to treat him with a Delicacy due to his Rank, which had sometime before induced me to send him the Message by Captain *Windsor*, the Particulars of which he has already faithfully related to the Court.

I trust I have little Reason to apprehend that you will be inclined to consider my Conduct, as I have stated it in Answer to this Fourth Article of the Charge, *as disgraceful to the British Flag*.

After I had wore upon the same Tack with the Enemy, to protect the disabled Part of my Fleet, and to collect the rest together, there would have been little to do to renew the Battle, but bearing right down upon the Enemy, if my Accuser had led down his Division in Obedience to the repeated Signals and Orders which I have stated. The *Victory* never went more than Two Knots, was under her double-reefed Topsails and Foresail much shattered, which kept the Ships that were near her under their Topsails, and suffered the *French Fleet*, which might always have brought me to Action if they had inclined to do it, to range up parallel with the Center, under very little Sail; and it was to protect the Five disabled Ships abovementioned, and to give the rest Time to form into some Order, that I judged it more expedient to stand as I did, under that easy Sail, than to bring to with my Head to the Southward. The Court will judge whether it was possible for any Officer in the Service really to believe, that these Operations could give the Appearance of a Flight, or furnish a rational Pretence to the *French Admiral* to claim the Victory, or publish to the World that the *British Fleet* had run away.

The Prisoner then desired the Fifth Article of the Charge might be read; which was read by the Judge-Advocate accordingly.—And the Prisoner answered as follows:

On the Morning of the 28th July, the *French Fleet*, (except Three Sail, which were seen on the Lee-quarter) was only visible from the Mast-heads of some of the Ships of the *British Fleet*, and at a Distance from me, which afforded not the smallest Prospect of coming up with them, more especially as their Ships, though certainly much damaged in their Hulls, had not apparently suffered much in their Masts and Sails; whereas the Fleet under my Command was generally and greatly shattered in their Masts, Yards, and Rigging, and many of them unable to carry Sail.—As to the Three *French Ships*, I made the Signal at Five o'Clock in the Morning, for the *Duke*, *Bienfaisant*, *Prince George*, and *Elizabeth*, to give them Chace, judging them to be the properest Ships for that Purpose, but the Two last were not able to carry sufficient Sail to give even Countenance to the Pursuit, and looking round to the general Condition of my Fleet, I saw it was in vain to attempt either a general or a partial Chace. Indeed, my Accuser does not venture to allege, that there was any Probability, or even Possibility, of doing it with Effect, which destroys the whole Imputation of his Charge.

Under these Circumstances, I trust I could not mistake my Duty, and I was resolved, as I have already observed in the Introduction to my Defence, not to sacrifice it to an empty Shew and Appearance, which is beneath the Dignity of an Officer unconscious of any Failure or Neglect.—To have urged a fruitless Pursuit, with a Fleet so greatly crippled in its Masts and Sails, after a distant and flying Enemy, within Reach of their own Ports, and with a fresh Wind blowing fair for their Port, with a large Swell, would have been not only wantonly exposing the *British Fleet* under my Command, without End or Object, but misleading and defeating its Operations, by delaying the Refitment necessary for carrying on the future Service with Vigour and Effect.

My Accuser asserts, by a general Conclusion, to the Five Articles exhibited against me, that from what he states as Instances of Misconduct and Neglect in me, a glorious Opportunity was lost of doing a most essential Service to the State, and that the Honour of the *British* Navy was tarnished.

The Truth of the Assertion, that an Opportunity was lost, I am not called upon either to combat or deny. It is sufficient for me, if I shall be successful in proving that that Opportunity was seized by *me*, and followed to the Extent of *my* Power: If the Court shall be of that Opinion, I am satisfied, and it will then rest with the Vice-Admiral of the Blue, to explain to what Cause it is to be referred, that the glorious Opportunity he speaks of, was lost, and to whom it is to be imputed (if the Fact be true) that the Honour of the *British* Navy has been *tarnished*.

Having now offered to the Court precise Answers to all the Charges exhibited against me, I shall proceed to call my Witnesses, to support those Answers, and of course to refute the Charges in the Order in which they have been made.—I shall call them, not as a Prisoner commonly calls his Witnesses—to oppose them to those which appear for the Prosecution.—Quite the contrary.—I bring them to support, confirm, enlarge, and illustrate, almost the Body of the Evidence which has been given by my Accuser.

But before I sit down, I must discharge a Duty which I feel myself to owe to the Reputation of a Service highly and justly favoured in this Country, and which can never suffer in its Honour, but the Nation itself will suffer in Proportion.

I have heard it asserted, and contended for during this Trial, as an essential and indispensable Right of a Captain of a Man of War, to make Additions and Alterations in the Ship's Log-book, even after the original Entries had been seen, examined, and approved by himself.—I have seen this attempted to be excused, nay, even justified and boasted of in a Case where the Alterations and Additions introduced Matter of criminal and capital Offence; acknowledged by the Party to have been introduced Months after the original Entries were inserted; and with Knowledge, that a criminal Charge had then been exhibited against the Person in whose Trial they were first heard of.—I have heard this attempted to be defended where the most material of the Alterations and Additions were certainly not supported by Fact.

Upon this Occasion surely I am called upon to enter my Protest against a Claim which subjects the Log-books of the King's Ships, that ought to contain, if not always a perfect, yet always a genuine Narrative of their Transactions, when the Events are fresh and recent; when they cannot be mistaken, and can hardly be misrepresented, and which ought never to be altered after the Entries have been made and authorised.

This is the Case of the first Alteration of the Log-book.—Another Alteration has since appeared in another Log-book!—that of the Prosecutor himself! little differing from the former, except that the Person that has actually made it, does not appear to justify it; that the Witness to it states it to have been made soon after the Engagement, and that the Destruction of some Leaves, and the Substitution of others, seems to be rather made for the Purpose of exculpating another Person, than of criminating me.—But whatever the Intention was, the Thing is equally unjustifiable in all Respects; it tends equally to destroy all Sort of Use in these kind of Records, and to render them highly fallacious, and possibly highly dangerous.—I do not dwell on all the Particulars of that unhappy Business!—it is painful to me, and the Nature of the Transaction is but *too* visible.—There has always been, and probably will always be, something slovenly in these Books; and the Masters have thought they have more Power over them than is proper.—There is however a great Difference between Inaccuracy and malicious Design—there is a Difference between the Correction or Supply of indifferent Matters, and the cancelling of Pages and putting in others—omitting, adding to, and varying the most important Things, for the most important Purposes.

It is also proper for me to state two or three Facts to the Court, in order to place the Conduct of my Accuser in its proper Point of View.

I admit that the Charges he has exhibited against me are very heinous.—They express Misconduct and Negligence, they imply (and so the Court has understood them to imply) Cowardice also.—If I ever committed them at all, it was in his Presence, and in the Presence of a numerous Corps of Officers, who being called upon by the Court, have all unanimously refused, or I trust will refuse to fix any one Charge upon me.—I have mentioned before, the Circumstance of my Accuser's Silence for Months, during which he was called upon by the Duty he owed his Country, to have stated my Misconduct, if any such had existed; and his Refusal to do so, is strong Evidence of itself, that even in his Opinion, my Conduct was liable to no Reproach.

But this is not all; even so late as the 5th of *October* last, I received a Letter from him, dated at Sea, conceived in Terms of great Good-will and Respect for me—in which, having Occasion to mention some Prizes which had been taken by the Fleet; he considers

that

that as a Subject of little Moment to me, assigning *this* as a Reason—"For I know you " had rather meet the *French Fleet*."—*That Fleet* which he says I fled from !

Is this consistent with the Tenor of those Charges?—Could the Man who wrote the one believe the other?—it is absolutely impossible.—I cannot produce this Letter in Evidence, but when I go out of the Court, I will shew it to any Gentleman who is desirous to see it.

Another Thing more and I have done.—

Sir *Hugh Palliser* thought proper to address the Public, by a printed Newspaper, dated the 4th of *November*;—principally, as it seems, for the Sake of asserting, that he was not, and insinuating that I *was*, the Cause of the *French* not being re-attacked in the Afternoon, the 27th of *July*.

In that Paper he positively denies that he received any Message by Captain *Windsor* saying a Word about renewing the Attack; and he calls the contrary Assertion a false one. Captain *Windsor* has been called, and he has proved, that at Five o'Clock he received from me, and at about Half past Five he delivered to Sir *Hugh Palliser* himself the Message to come with the Ships of his Division into my Wake, and that I only waited for him to renew the Attack.

This Account of Captain *Windsor* has been attempted to be discredited by the Prosecutor, who has asked Captain *Bazeley*, and I believe One or Two more, whether it was not a later Hour than Captain *Windsor* named,—I shall for that Reason call Witnesses to confirm Captain *Windsor* in all the Circumstances of his Testimony.

I owe it to him as an Honourable Man, to shew that his Evidence is correctly true.

I will prove that the Message sent by me was precisely the Message delivered by him at the Time he speaks to—and that it was exactly repeated by him to the Vice-Admiral.—Yet after his own Ears had heard at Half past Five in the Afternoon of a Summer's Day, that I waited only for him and his Division to renew the Attack,—this Gentleman applies to me, ignorant, negligent, cowardly, as he now represents me, to certify his good Behaviour, and to support his Character against the Malice of his Enemies.—He applies to me to sign a Paper, containing many Particulars directly contrary to the Evidence you have heard upon Oath, and which I will also shew to any one.

At present, I have only to do with one of those Particulars.—That Paper (concurring with his Attempts in this Trial) contains this Assertion, that the calling his and Vice-Admiral Sir *Robert Harland's* Divisions into my Wake in the Evening, was not for the Purpose of renewing the Battle at that Time;—but to be in Readiness for it in the Morning.—This my Accuser had the Confidence to tender to me to sign.

To sign an Assertion of a Fact—absolutely unfounded,—the contrary of which, I knew to be true, and the contrary of which Captain *Windsor* has proved, my Accuser knew to be true.—How that Gentleman felt when this came out, I know not.—But if I could conceive myself in the same Situation, I know that it would be difficult to express what I should feel.—*I cannot wish so heavy a Punishment to my worst Enemy.*

Adjourned till Monday Morning at Ten o'Clock.

TWENTY-SECOND DAY.

MONDAY, the 1st of FEBRUARY, 1779.

COURT met according to Adjournment.
Prisoner brought in, and Audience admitted.

Sir Robert Harland, *Baronet, Vice-Admiral of the Red, sworn.*

Prisoner asked,

Q. What Day was the *French* Fleet first discovered?

A. On the 24th, by Sea-reckoning, after Twelve o'Clock.

Q. Were they seen the next Day?

A. They were seen the next Day from the *Queen*, at Noon.

Q. Were they to Windward or to Leeward of the *English* Fleet then?

A. To Windward.

Q. If the *French* had it in their Power to come to Action that Day, or the 25th or 26th?

A. The *French* had it in their Power to come to Action that Day, or the 25th or 26th.

Q. Did I pursue them with a Prefs of Sail till I brought them to Action, conformable to the worst sailing Ships?

A. You pursued them with a Prefs of Sail till you got up with them.

Q. If you had commanded an *English* Fleet of the same Number of Ships, in the Situation the *French* were with respect to the *English*, should you have hesitated one Moment in bearing down, and bringing them to Action, on account of the Weather?

A. Not a Moment.

Q. If I had pursued the Enemy in a Line of Battle, could I have preserved my Nearness to the *French* Fleet?

A. I think not.

Q. Did you see the *French* Fleet on the 27th in the Morning?

A. Yes, I saw them.

Q. On what Tack?

A. The Larboard Tack when the Day broke.

Q. On what Tack was the *English* Fleet at that Time?

A. Upon the same Tack.

Q. Did the *French* Fleet on the Larboard Tack, or when got upon the Starboard Tack, shew any more Intention to come to Action than on the preceding Days?

A. If this Question means when the *French* were first upon the Larboard Tack till Eight o'Clock, and afterwards upon the Starboard Tack till they changed again upon the Larboard Tack, they shewed no more Inclination or Disposition to engage than they had done on the preceding Days.

Q. If at the Time they got upon the Starboard Tack I had formed the Line of Battle, would it not have deprived me of the Power of getting to Action that Day?

A. If you had formed the Line of Battle, and had continued in it, you could not have brought the Fleet to Action that Day, unless the *French* had come to you.

Q. Was there ever, during the Course of that Time, when the *French* were upon the Starboard

Tack, a dark Squall, which obscured them from your Sight?

A. They were obscured that Morning near an Hour.

Q. At what Time did the Firing begin between the *British* and *French* Ships?

A. Between Eleven and Twelve o'Clock.

Q. Upon what Tack were the *French* then?

A. Upon the Larboard Tack.

Q. Were not the Center and Rear Divisions of the *French* Fleet in a confused Appearance when the Firing began, in passing them?

A. In passing them, the Van of the *French* Fleet was not well connected with the Center, nor the Center with the Rear, as to Distance or Direction; and though there were Six or Eight Ships, but I rather think Six, upon my Memory, that had got up well closed together, and had formed in a Body out of the Center, there were two Flags. I observed with those Six Ships, which had a confused Appearance. It is very unusual to have two Flags with Six or Eight Ships; but these were in a close, well-connected Body.

Q. Did not the *French* begin their Fire at your Ship at a very great Distance?

A. When the *French* began their Fire on the *Queen*, it was at a great Distance.

Q. If I had ordered Ships by Signal of your Division to chace to Windward, and after that Signal I became engaged in the Ship where my Flag was, by which I could not direct distant Ships, I ask you, Sir, if you should have thought yourself warranted to have ordered those Ships to you, if you had judged it for the general Service of that Moment to have done so?

A. I should have been happy in assisting you, and rendering any Service to the Fleet while I had any Command in it. The Occasion that is stated in the Question, I think, would have been a sufficient Warrant to me to have done it.

Q. After you had passed the Rear of the *French* Fleet, did you observe the *Formidable* before she was out of the Fire?

A. I do not recollect seeing the *Formidable*, after the Fleet had tacked in the Morning, but twice that Day, to make any Observation upon her. The first was when she was coming out of her Cannonade, and the second was when I passed her to Leeward, or left her, I think, upon my Weather-beam, in going down to form in your Rear. These were the Times that I observed the *Formidable*, and no other. We were at the extreme Ends of the Fleet, which accounts for it.

Q. At the Time you did observe the *Formidable* coming out of the Fire of the Rear of the *French* Fleet, did there appear to you the smallest Danger of the Vice-Admiral of the Blue's being cut off?

A. There did not appear to me the smallest Intention in the *French* to cut her off.

Q. After you was out of Action, and got upon the Larboard Tack, and leading upon the *Victory's* Weather-bow, the *Victory* upon the Larboard Tack also, how many Ships of your Division were connected with you?

A. At most Seven.

Q. How many Points of the Compass was your Division to Windward of the *French* Fleet?

H h

A. They

A. They were upon my Lee-bow, and ahead withal of me, when I was upon that Tack.

Q. If I had directed you to lead upon the Enemy, did it appear to you that I had Ships with me in a Line, or connected so as to have given you proper Succour in your re-attacking the *French* Fleet, in the Appearance they then made?

A. Most certainly and most truly you had not.

Q. Did you observe the *French* Fleet, whilst you were upon the Larboard Tack, draw out of the Body of their Fleet, and begin forming their Line upon the Starboard Tack?

A. I did.

Q. Did the *French*, before their drawing out on the Starboard Tack, appear to you disordered, or were they in a close Body?

A. They were not in a regular Line as to Distance, and therefore not in a close Body.

Q. At that Time had it a confused Appearance, or only a natural Appearance upon changing their Position?

A. It did not appear to me to have any Confusion in it, but a well-regulated Manœuvre.

Q. Under the Circumstances and Situation you have observed the *English* Fleet to be in, was it in my Power, as an Officer, to have prevented the *French* from forming their Line upon the Starboard Tack?

A. It was no more in your Power to have done that, than it was in your Power to have collected your Ships to have done it with.

Q. What then would have been the probable Consequence of Orders to you at that Time to attack them?

A. I should have obeyed, and the *French* would have deserved to have been hanged, if they had not taken me and the Ships of my Division.

Q. Do you recollect at what Hour of the Day on the 27th I wore from the Larboard to the Starboard Tack?

A. About Two o'Clock, to the best of my Recollection.

Q. Did I immediately after that use my Endeavours to get my Line formed?

A. You certainly did.

Q. Did you receive any Orders from me by the *Proserpine* after the Fleet wore to the Southward?

A. I did.

Q. What were they?

A. To form with my Division astern of the *Victory*.

Q. If you had not received such Orders, did you see Reason to have put yourself in the Situation at your own Risk, as an Officer, for the Moment?

A. Before I received those Orders, I saw the Necessity there was of taking that Post with my Division without Loss of Time, and was doing it at my own Risk.

Q. What would have induced you?

A. Seeing the Commander in Chief unsupported, within the Power of the whole *French* Force, that was astern of him.

Q. If the Vice-Admiral of the Blue, whilst you was with your Division in the *Victory's* Rear, had bore down with his Division to have taken his Station, should you not have thought yourself justified to have immediately made sail ahead, even before Orders could have reached you?

A. I should have wished to have received those Orders, if they could have come to me; but if it was plain that I could not receive them, the same Reason that I have given for going into the Rear of the Fleet, would have carried me into the Van of the Fleet for the Service of the whole, if I saw

the Vice-Admiral with his Division was standing for the Rear.

Q. At what Time did you receive Orders from me in the Afternoon to go into your proper Station?

A. After Five o'Clock.

Q. What was the Situation of the *French* Fleet in Appearance at that Time?

A. They had formed as far as I could see them, and were leading their Line on to the Southward.

Q. Was the Signal for the Line of Battle in the Afternoon flying on board the *Victory*, from the Time of my being on the Starboard Tack till Dark, except the short Time that it was hauled down, to shew plainer the Signal for bearing down?

A. It was.

Q. Had the *British* Fleet, standing to the Southward upon the same Tack with the *French*, and both forming their Line under the Sail carried by the *Victory*, an Appearance of a Flight?

A. O fie! fie! No.

Q. Were we then avoiding the *French* Fleet, or executing a proper Manœuvre to form our Line on the same Tack, and by that means, when executed, to bring on a general and decisive Engagement?

A. You was using every Means to collect your Force, and form a Line of Battle; and after you had done so, I make no doubt but you would have brought on a general and decisive Action, if you could.

Q. Did I lose any favourable Opportunity of re-attacking the *French* Fleet any Time in the Afternoon, while there was Day enough to have done it properly?

A. If I have not said it before, I say it now;—you never had the Means of doing it.

Q. When you passed the *Victory* to go ahead into your Station, did you pass to Windward or to Leeward of her?

A. I passed the *Victory* to Windward.

Q. At what Distance, do you recollect?

A. About a Mile.

Q. Did you observe the Sail the *Victory* was under during the Afternoon?

A. I must have observed it at the Time; and, as well as I can recollect it now, she was sometimes under her Topsails, and sometimes under her Topfairs and Forefail. Her Topfairs might be reefed.

Q. Do you recollect what Sail you carried on board the *Queen* during the Night, to preserve your Station?

A. Sometimes our Topfairs, and sometimes our Topfairs and Forefail; our Topfairs reefed two Reefs.

Q. Did you carry your distinguishing Lights all Night?

A. I always carried my distinguishing Lights in the Night.

Q. Were the *Victory's* distinguishing Lights seen from her Bowsprit End all the Night of the 27th?

A. The *Victory* carried a very good Light at her Bowsprit End; I saw it myself frequently that Night.

Q. Do you recollect at what Rate you went all Night?

A. To the best of my Recollection, it was sometimes under two Knots, and never reached above three.

Q. On the 28th in the Morning, did it not appear that the *French* had run off in the Night?

A. The *French* made their Escape in the Night.

Q. On the Morning of the 28th, were the *French* Fleet seen from the *Queen's* Mast-head?

A. They were steering to the South-east.

Q. Could it be discerned what Sail they were making?

A. They were at too great a Distance for that; for sometimes they were seen, and sometimes they were not. They only caught a Sight of them twice, I think.

Q. If I had attempted the Pursuit of them, with the Wind and Weather as they were, was there the least Probability of reaching them before they got into the Port of *Brest*, conditioned as the *British* Fleet was after the Action?

A. I think not.

Q. You have heard all the Articles of the Charge read; I must desire you will state to the Court any Instance, if you saw or knew of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of *July*?

A. I know of none, and therefore cannot state any.

Withdrew.

Mr. Thomas More, late Purser of the *Victory*, sworn.

Q. Did I not appoint you to be near my Person, and to take Minutes and Observations for my Use?

A. You did.

Q. Do you recollect the relative Positions of the Three Divisions of the *British* Fleet, with respect to each other, on the Morning of the 27th?

A. At about Half an Hour after Five in the Morning of the 27th *July*, the Vice-Admiral of the Red, with most of the Ships of his Division, and some of the Center Division also, were from three to four Miles to Windward of the *Victory*, from a little before the Beam to the Quarter: The Vice-Admiral of the Blue, with the Ships of his Division, was from three to four Miles to Leeward of the *Victory*, from the Beam to about the Chefs-tree; one or two Ships might be before the Chefs-tree—The Remainder of the Ships of the Center Division were about the *Victory*. In speaking of the Rear Division, I must except the *Ocean*, she was further astern; she was upon the Quarter, and all the Ships of that Division, except her, I believe, had their Mainsails up.

Q. Do you recollect what Sail the Vice-Admiral of the Blue carried?

A. The *Formidable's* Mainsail was up.

Q. What was the Position of the *French* Admiral with respect to the *Victory*, which was in the Center of the *English* Fleet?

A. The *French* Admiral was rather afore the Beam of the *Victory*, nearly in the Center of his own Fleet, which was much the same, in an Order of Battle, as they had been the preceding Mornings; they were about nine or ten Miles to Windward of us: The *French* Fleet were in general under their Topsails and Courses at that Time.

Q. Did you see a Signal made by the *Victory* that Morning, for Ships of the Vice-Admiral of the Blue's Division to chase to Windward, and at what Time?

A. I beg Permission of the Court to make use of my Minutes for this Purpose in particular; they were the Minutes I took in consequence of Orders I received from Admiral *Keppel*, to be attentive to the Signals which I kept from the first seeing of the *French* Fleet until the *Tuesday* Morn-

ing; and they are as they were written at that Time, and this is the Book I wrote them in.

[He was permitted to use his Book accordingly.]

At Half an Hour after Five, Signals were made for the *Shrewsbury*, *Robust*, *Egmont*, *America*, *Terrible*, *Elizabeth*, *Defiance*, and *Worcester* to chase to Windward.

Q. What appeared to you to be the Intention of that Signal?

A. Most of the Ships of the Center Division were to Windward of the *Victory*; there was a large Space between the Vice-Admiral of the Blue's Division and the Leewardmost Ships of the Center; and I apprehend that it was meant to bring up the best sailing Ships of the Vice Admiral of the Blue's Division to support the Center, in case the *French* would permit us to bring on an Action.

Q. At the Time the Signal was made, was there any greater Indication of an Intention of the *French* to fight than on the preceding Days?

A. None; they were close-hauled, carrying as much Sail as their worst sailing Ships could keep up with them under; they were on the Larboard Tack at that Time.

Q. Did you observe the *French* Fleet changing their Position at any Time in the Morning of the 27th of *July*, between the Hours of Eight and Ten o'Clock. When I speak of the *French* Fleet altering their Positions at any Time, I mean to speak of the *French* Admiral; as my Observation was particularly to him; and the Extremes of his Fleet were perpetually, some or other of them, wearing or tacking to get into their Stations?

A. At Half past Nine the *French* Admiral tacked; most of his Fleet were about before him that Morning, continuing to carry the same Sail as they had on the Larboard Tack.

Q. At what Hour did the *British* Fleet tack after the Fleet of *France*?

A. Soon after the *French* Admiral was about, the Wind veered a little to the Southward, and the *British* Fleet therefore stood on till a Quarter past Ten, and we lay up better for them than we had before. I am speaking of the Time when we came to sail from the Larboard to the Starboard Tacks.

Q. Was there any Alteration of the Wind at this Time, or soon after we got upon the Starboard Tack?

A. The Wind shifted near two Points, which brought us to lie up for the sternmost of them. We soon afterwards lost Sight of the *French* Fleet in a very thick Squall.

Q. After this did you see the *French* Fleet get on the Larboard Tack, before the Action began, and at what Hour?

A. We lost Sight of the *French* from about twenty Minutes past Ten, till Eleven o'Clock, when we then saw them; they appeared in considerable Confusion, a large Body of them bearing South South-east; they were then getting to Sail on the Larboard Tack. That Body of them which bore South South-east were in such Confusion, and so close together, that the Admiral, and most of the People on the Quarter-deck of the *Victory*, thought that several of them were on board each other.

Q. At what Time did the Firing begin between the two Fleets?

A. At Fifteen Minutes past Eleven; the Wind then at W. S. W.

Q. Had the *French* Ships, which began Firing, their Colours flying at that Time?

A. Neither the *French* nor the *English* Ships had their Colours flying at that Time?

Q. At

Q. At what Time did I make the Signal for Battle?

A. About Twenty Minutes after Eleven.

Q. Was the *French* Fleet in a regular Line of Battle when the Action was brought on?

A. At a Quarter past Eleven, when the Action commenced, the *French* Van was very irregular, some more than a Mile to Windward of others of them. They all appeared to keep their Wind as they approached us. They were at very unequal Distances from each other, independent of their being to Windward and to Leeward of each other; what was properly their Center was pretty compactly formed, but they were not in a Line; what should have been their Rear Division I could make no Observation upon, as they were far to Windward of the *Bretagne* and the Ships about her, and must have passed us whilst we were engaged with what was properly their Center.

Q. Were the greatest Part of the *British* Ships, when they came to Action, though not in a Line, in a Situation speedily to support each other?

A. They were.

Q. How soon after I made the Signal for Battle was it that the *Victory* was engaged with the *French* Admiral?

A. About Twenty-seven Minutes.

Q. Did any, and how many, of the *French* Van fire at Random a great way off the *Victory*?

A. All the *French* Van, but three or four Sail, fired at the *Victory*, but hardly any of their Shot reached her.

Q. Did the *Victory* return the Fire of any of these Ships?

A. Not one.

Q. How many Ships ahead of the *French* Admiral fired upon the *Victory*, in passing, to do Execution?

A. Three Sail fired upon us, but, except two or three Guns, there was no Fire returned to them, it being ordered to be reserved for the *French* Admiral.

Q. When the *Victory* began to fire upon the *French* Admiral in the *Bretagne*, how did the *French* Admiral appear to be situated with respect to his Fleet?

A. At a Quarter before Twelve, when the *Victory* began to fire upon the *Bretagne*, there was a Three-decked Ship, with a White Flag at her Foretopmast-head, close astern of the *Bretagne*.—There were then Three Sail of private Ships, a Ship with a White and Blue Flag flying at the Foretopmast-head, and Two Sail of private Ships astern of her, and no other Ships astern of the *French* Admiral.

Q. In passing the *French* Admiral (except the Moment we were obliged to weather our Helm, not to run aboard of the Three-deck Ship with a White Flag at the Foretopmast-head) did not the *Victory* cling her Wind, not to lose one Fathom of her Position and Nearness to them?

A. Till the Admiral mentioned that Particular, I did know the Helm had ever been put up. I should have said that she was always to the Wind, as close as she would lie—At the latter Part of the Action, I believe she would not lie close to the Wind.

Q. At what Time did the *Victory* pass the Rear of the *French* Fleet?

A. At One o'Clock.

Q. At what Time did I make the Signal to wear towards the *French*?

A. The Signal to wear was made in Ten Minutes afterwards; as soon as you could see for the

Smoke clearing away; but the *Victory* could not be wore till a Quarter before Two o'Clock.

Q. Can you remember what Ships wore with the *Victory*, and when the Signal for Battle was hauled down?

A. Not a single Ship wore with the *Victory*.—The *Prince George* continued to stand on the Starboard Tack till we had passed her on the Larboard Tack; and about a Quarter of an Hour afterwards, she (the *Prince George*) and one or two Sail more got round.

Q. Can you say what other Ships were connected with, or near the *Victory*?

A. I have not answered to the Time of the Signal for Battle being hauled down; I recollect it was hauled down about a Quarter before Two. I have it not noted down, but I am sure it was just about the Time we wore; I will not be positive whether just before or just after. From a Quarter before Two till Three o'Clock, during which Time we were on the Larboard Tack, standing after the *French* Fleet, there was not a single Ship formed with the *Victory*; we had passed all the Ships that had fought astern of us. There was one Ship with her Mizentopmast gone, that was abreast of our Chefs-tree about Three o'Clock; I took it to be the *Foudroyant*.

Q. At what Hour was the Signal made for the Line of Battle after being upon the Larboard Tack?

A. At Two o'Clock.

Q. Did you observe any Ships, whilst the *Victory* was upon the Larboard Tack, to form in their Station, or close with the *Victory*?

A. Whilst we were on the Larboard Tack there were no Ships near her on the same Tack, except the *Prince George*, the *Beinfaisant*, and the *Foudroyant*; the *Valiant* got about after us, but could not join us; and none of these Ships were ever in their Station while we were on the Larboard Tack, from a Quarter before Two till Three; they were all more than a Mile from us, except the *Foudroyant*.

Q. What was the Position of the *French* Fleet while the *Victory* was standing towards them?

A. The Position of their Fleet was—About Three Sail of them we saw to Windward of the Forefall, a large Body right ahead of us, and their sternmost Ships not very open on the Lee-bow; at Half an Hour after Two they were about Three Miles off us; they then began to get round and form on the Starboard Tack; for some Time they pointed their Heads so, that they would have weathered the *Victory*; but about a Quarter before Three they kept from the Wind, and pointed for four or five Sail of the *English* Ships that were far to Leeward, which appeared disabled.

Q. Did you observe one of the *French* Ships go off before the Wind?

A. At Half after Two her Mainyard and Mizentopmast being gone, she was followed soon after by a Frigate.

Q. What was the Position of the Vice-Admiral of the Red Division at the Time you last spoke of the *French* Fleet, and how many Ships were with him?

A. When I first saw the Vice-Admiral of the Red and his Division, after the Action had ceased in the Van, they were on the *Victory*'s Lee-bow, standing towards us on the Larboard Tack; this was at about Five Minutes after One, soon after the Smoke cleared away.—They continued to stand on the Larboard Tack, some of their Ships passing us very close. At a Quarter before Two, when

when we wore the Vice-Admiral of the Red, with about seven Sail (himself included), were on the *Victory's* Starboard-bow, or between that and the Chefs-Tree.—At Half an Hour after Two, when the *French* were forming their Line on the Starboard Tack, and we standing towards them on the Larboard Tack, the Vice-Admiral of the Red, and the Ships with him, were a little before the Beam of the *Victory*—At Three o'Clock they were broad upon the Larboard-bow of the *Victory*, full Two Miles and an Half from us.

Q. What Time did the *French* Fleet draw out from their Main Body, and begin forming a Line upon the Starboard Tack, standing to the Southward?

A. At Half after Two in the Afternoon.

Q. Can you describe the Situation of the *British* Fleet at that Time?

A. The Vice-Admiral of the Red, with six or seven Sail, were to Windward, nearly abreast of the *Victory*; the Vice-Admiral of the Blue was about passing us, continuing to stand on the Starboard Tack.—All the other Ships of his Division had passed us on the Starboard Tack before that Time.—There were four or five Sail far to Leeward, a great Way abaft the Beam of the *Victory*.—There were about four Sail of the Center Division in different Positions round us at about a Mile Distance; which four Sail were all the Ships (except those with the Vice-Admiral of the Red) which were on the Larboard Tack near us.

Q. When was the Signal made for the *British* Fleet to wear and stand to the Southward?

A. At Seven Minutes past Three.

Q. Do you recollect the Position of the Vice-Admiral of the Blue, and the Ships of his Division at that Time?

A. After we were about on the Starboard Tack, standing to the Southward, we passed the *Formidable* to Leeward.—From that Time several of the Ships of the Vice-Admiral of the Blue's Division continued to join her; I cannot say the Number of them at that Time: They continued to Windward.

Q. Was the Signal flying at that Time to form the Line of Battle?

A. The Signal to form the Line of Battle was made at Two o'Clock, when we were on the Larboard Tack, and was continued flying all the Afternoon, till within Twenty Minutes of Four.

Q. How soon after was it hoisted again?

A. It was hauled down at that Time, to let the Fleet see the Signal for the Ships to Windward to come down into the Admiral's Wake, which was then hoisted.—In Ten Minutes after that, the Ships having seen that Signal, it was hauled down, and the Signal for forming the Line of Battle again hoisted and continued flying, I believe, all Night.

Q. Soon after the *Victory* was about on the Starboard Tack, did she lead from the Wind to give Protection to those Ships which you have before described as disabled to Leeward?

A. On the *Victory's* first coming about to sail on the Starboard Tack at Seven Minutes past Three, she was kept to the Wind for about Ten Minutes, to endeavour to collect some of the Ships near us; but the Admiral gave that up, observing at the Time he directed the *Victory* to be kept from the Wind, that the *French* had a Design to affront him (those were his Words), by an Attack on those Ships that were to Leeward.—The *Victory* was then kept away from the Wind, steering S. S. E. the Wind was abaft the Beam Half a Point, or thereabouts.—I am now speaking to about Twenty or Twenty-five Minutes past Three, for the Wind afterwards came about further to the Westward.

Q. What Time was the Signal for the Ships to Windward to come into the *Victory's* Wake, again made in the Course of the Afternoon?

A. At the Time I was last speaking of, the Signal for the Ships to come into the Wake had not been made; it was not made 'till Forty Minutes past Three, and was hauled down at Ten Minutes before Four, when the Signal for forming the Line was again hoisted.—At Half past Four, the Signal for the Ships to come into the Admiral's Wake was again made; but the Signal for the Line of Battle was not hauled down on making it the Second Time?

Q. What was the Position of the Two Vice-Admirals, and the Ships that were with them at that Time, and till Five o'Clock?

A. The Vice-Admiral of the Red, with Six or Seven Sail, including himself, was forming astern of the *Victory*, in consequence of a Message which had been sent to him by Captain Sutton in the *Proserpine*. There was no Ship of the Center Division, but the *Foudroyant* then astern of the *Victory*;—The Vice-Admiral of the Blue, with about Seven or Eight Sail, was to Windward between the *Victory's* Weather-beam and her Quarter, keeping their Wind between Two and Three Miles from us—Captain Faulkener at that Time gave me his Glass, to observe we could count every Gun and Port distinctly; Four or Five Sail were still to Leeward upon our Bow.

Q. What had been the Conduct of the *French* Fleet from Three o'Clock to that Time, and how were they situated with regard to the *English* Fleet?

A. The *French* Fleet had continued forming their Line, keeping a Course nearly parallel to that which was held by the *Victory*, and the Ships near her; their headmost Ships were at Half after Four about Three Miles astern and to Leeward of the *Victory*.

Q. At that Time what Sail had the *Victory* set?

A. The *Victory* at that Time had her Foresail and Fore and Mizentopails set; her Maintopail was also set, with Two Reefs in it, which was done when it was bent to the Yard. The *Victory's* Maintopail was unbent soon after we got on the Larboard Tack as it was unserviceable.

Q. Did you hear any Messages or Orders sent by Frigates in the Course of the Afternoon of the 27th July?

A. At Five o'Clock the *Milford* was hailed, and ordered to acquaint Sir Robert Harland, that it was the Admiral's Orders, he should make Sail with the Ships of his Division that were formed astern of the *Victory*, and form the Van, which was her proper Station: those were nearly the Words and the Sense of the Order.—The *Fox* was sent immediately after to Sir Hugh Palliser to tell him to bear down, as the Admiral waited only for him and his Division to bring the Enemy again to Action.

Q. Do you recollect any other Signal that was made at that Time—any general Signal made for Ships to get into their Station?

A. At Five Minutes past Five the Signal was made for all Ships to get into their Stations.

Court asked,

Q. What was that Signal?

A. A Spanish Flag at the Maintopmast-head.

Q. Were there no Pendants out?

A. Not at the Time the Signal was made at the Mast-head, but the *Prince George* and *Bienfaisant*, whose Stations were astern of the *Victory* when the Signal for the Line of Battle was flying, and we on the Starboard Tack had, seeing the

Vice-Admiral of the Red form with his Division astern of the *Victory*, fallen into the Line, in the Manner they would have done had a Signal existed for forming the Line of Battle reversed.—It was to communicate to them, that the Admiral had given Orders to Sir Robert Harland to form ahead, that he then directed those Two Ships Pendants to be thrown out.

Q. Did they not obey it as quick as possibly could be expected?

A. They obeyed it immediately.

Q. Then before they got astern into their Stations, after the Vice-Admiral of the Red had gone from the Rear, what Ships were formed in a Line astern of the *Victory*?

A. Not one, but the *Foudroyant*.

Q. Did the Vice-Admiral of the Blue lead down the Ships of his Division, in Obedience to the general Signal I had made, or the Orders I had sent by the *Fox*, at any Time in the Afternoon of the 27th July?

A. No.

Q. What was the Position of the Vice-Admiral of the Blue from Five till Seven o'Clock?

A. He kept nearly the same Bearings of us, but kept his Wind between the *Victory's* Beam and Quarter.

Q. Were there any particular Ship's Signals made at or about Seven o'Clock for them to come into their Stations?

A. At Seven o'Clock, the particular Signal belonging to every Ship of the Vice-Admiral of the Blue's Division, excepting the *Formidable*, was made.—The Signal for Ships to come into their Stations was kept constantly flying, but their Pendants were also thrown out.

Q. What Sail was the *Victory* under the Remainder of the Afternoon after the Time you last spoke of?

A. Double reefed Topsails and Forefail, going from Two to Three Knots.

Q. Did the *Victory* make a less Sail than that before Dark?

A. At Eight o'Clock we close reefed the Topsails, and the *French* reefed just after us.

Q. What was the relative Positions of the Two Fleets when the Night set in?

A. The Vice-Admiral of the Red was formed ahead of the *Victory*.—The Ships belonging to the Center Division had all but One or Two joined us.—The *Foudroyant*, *Prince George*, and *Bienfaisant*, were formed in the Line astern of us—a considerable Way astern of them, but not in the Line;—there was another Ship endeavouring to get up, I took it to be the *Vengeance*.—The Vice Admiral of the Blue and the Ships of his Division, were to Windward about Three Miles, standing on, except Three or Four Sail, which had began to obey the Signal for coming into their Stations.—The *French* Fleet were steering a parallel Course to the *Victory*.—We had hauled our Wind an Hour before Dark.—The Third Ship of the *French* Van was abreast of our Quarter, about a Mile and a Half to Leeward of us.—The *French* Line was formed with Fourteen Sail ahead of the *French* Admiral, and the same Number astern of him. Their best going Ships were under their Topsails only, their heavy sailing Ships were under Topsails and Forefail, and some of them with their Mainsails set.

Q. Was the Signal for forming the Line, and for Ships to come into their Stations, flying till Dark?

A. They were flying long after Dark.

Q. Did you see the *Formidable* repeat the Signal for the Line of Battle at any Time in the

Afternoon, or the *Spanish* Flag at the Maintop-mast-head for Ships to come into their Stations?

A. We passed the *Formidable* Twice, from about Half past Two till about Half past Three.—She had at that Time no Signals flying of any Sort.—At the Time the Signal was made for Ships to come into the Admiral's Wake, a little before Four o'Clock, the *Formidable* repeated that Signal, but I never saw her repeat any other in the Course of that Afternoon.—She might have done it, but I did not see it.

Q. Where was the *Formidable*, when you last saw her in the Evening of the 27th July?

A. About Three Miles to Windward of the *Victory*, standing upon a Wind, about One and a Half, or Two Points, abaft the Beam.

Q. In the Morning of the 28th July, how many of the *French* Fleet were in Sight?

A. Three Sail, One much larger than the other Two.

Q. What Distance were they from the *Victory*?

A. Three Miles the nearest of them.

Q. Were any Ships Signals made to chase?

A. The *Bienfaisant*, the *Duke*, the *Prince George*, and the *Elizabeth's* Signals were made to chase, but the *Elizabeth* informed you, she could not carry Sail upon her Masts, and it was visible the *Prince George* could not make Sail as a Ship in Chase would.

The Prisoner then addressed the Court, in the following Words:

Mr. President,

I have examined this Witness, in order to furnish the Court with a correct Narrative of the Transactions of the 27th and 28th of July;—he having been particularly appointed by me to observe them;—his Examination has been very long and tedious, but I hope I shall be pardoned for having taken up so much of the Time of the Court.—I have no further Questions to ask him.

Prosecutor asked,

Q. Do you take upon you to swear positively, that the *Formidable* did not repeat the Signal for the Line of Battle when the *Victory* was abreast of her?

A. I did not see it.

Q. Will you take upon you positively to swear it?

A. I can say no more than my Belief.—I did not see it.

Q. And not that whole Afternoon till Dark?

A. I did not indeed—it might have been, as I before observed.

The Witness was ordered to withdraw.

Mr. George Rogers, Secretary to Admiral Keppel, sworn.

Prisoner asked,

Q. Were you not ordered to attend me to take Notes on the 27th July?

A. Yes, I was.

Q. Have you usually done so at all Times I have been in the Service during the Course of last War?

A. I had the Honour to attend the Admiral in that Situation, during the whole of his Service in the last War, and it is the greatest Pride I have.

Q. What Hour did the *French* begin their Fire on the 27th?

He had leave to have Recourse to Minutes, which, he said, were wrote at the Time, and in the Book then in his Hand.

A. Twenty Minutes past Eleven, by my Watch.

A. What

Q. What Time did I make the Signal to engage.

A. Twenty Minutes past Eleven.

Q. With what French Ship did the *Victory* begin to engage?

A. A Three Deck Ship, with a Flag at the Maintopmast-head, some Guns might have been fired before, but the whole of the Fire was directed to that Ship.

Q. Did I pass in Action near any other Three-decked Ships of the Enemy?

A. Yes, there was another which followed close to the First, and approached much nearer the *Victory*.

Q. How near was she?

A. Very close indeed—so as to appear as if she was coming on Board.

Q. In what Part of the French Fleet were these Two French Admirals situated?

A. Very near the Rear.

Q. At what Time did the *Victory* pass the Rear of the French Fleet, and cease firing?

A. At One o'Clock, or a few Minutes after.

Q. At what Time did I make the Signal for the Fleet to wear?

A. At Forty-five Minutes past One.

Q. At what Time was the Signal for Battle hauled down?

A. I cannot say the exact Minute, but very near the same Time.

Q. Do you know what Number of Ships wore with the *Victory* at the Time she wore to get on the Larboard Tack.

A. I cannot say: I saw few or none at the Moment.

Q. What Time was the Signal for the Line of Battle made after being upon the Larboard Tack.

A. It was made at Two o'Clock precisely, by my Watch.

Q. What Time was the Signal made to wear to the Southward again?

A. At Ten Minutes past Three.

Q. Did you observe the French Fleet at this Time, and were they forming their Line upon the Starboard Tack?

A. They were drawing out from a Body, and were forming a Line.

Q. How long had they been standing towards the *Victory* before she wore, and how were they steering?

A. I cannot be exact as to the first Part, but when I observed them, they were laying up for the *Victory's* Stern.

Q. That was then after the *Victory* had got about again on the Starboard Tack?

A. Yes.

Q. Before the *Victory* wore on the Starboard Tack, had either the Center Division or the Vice-Admiral of the Blue's Division got either close connected in their Stations in the Line of Battle, or near to the *Victory*?

A. There were no Ships that could be said to be connected with the *Victory*. The Vice-Admiral of the Blue with Part of his Division was to Windward.

Q. After wearing to the Southward, did you observe any of the British Fleet much to Lee-ward repairing their Damages?

A. Yes, I particularly took Notice of Four.

Q. Did the Van of the Enemy seem to point towards them?

A. They did; they kept away for that Purpose apparently.

Q. Did you observe the *Victory* edge away Two or Three Points towards those Ships, in order to secure their Junction?

A. I do recollect very perfectly that she did.

Q. Was the Signal for the Line of Battle ahead flying from the Time the *Victory* wore to the Southward till Dark—or was it hauled down to shew more clearly the Signal for Ships to bear down into my Wake?

A. From my own Notice, I should say the Signal for the Line of Battle was kept flying from Two o'Clock (the Hour I think I said it was hoisted) till dark Night. I understood that it had been hauled down some short Time, the better to shew the blue Flag that had been hoisted at the Mizzen-peak for another Purpose—but I did not see it hauled down myself.

Q. Did you ever observe the Signal for the Line of Battle ahead to have been repeated on board the *Formidable* during the Afternoon?

A. I never saw the Signal for the Line of Battle flying on board the *Formidable* the whole Afternoon.

Q. What Time did I send the *Milford* to Sir Robert Harland in the Afternoon, after being on the Starboard Tack?

A. At Three Quarters past Four o'Clock, by my Watch, when the Message was delivered.

Q. At what Time did I send the *Fox* to Vice-Admiral Sir Hugh Palliser?

A. I cannot be exact as to the Minute—but it was immediately after the hailing the *Milford*, which I have considered at Five o'Clock, or rather before.

Q. What Orders did I send by the *Fox*?

A. To desire Sir Hugh Palliser to bear down into his Station in the Line, the Admiral waiting for him to renew the Action.

Q. Did you observe the *Fox* speak to or range near the *Formidable*?

A. I saw the *Fox* close under the *Formidable's* Lee-quarter.

Q. At what Time might that be?

A. I suppose in about Half an Hour from the Time she left the *Victory*.

Q. Did the Vice-Admiral of the Blue bear down in consequence of the Message I sent by the *Fox*?

A. I did not see any Motion made on board the *Formidable* to comply with the Orders, though I looked at her with great Attention.

Q. At this Time, how far upon the Weather-quarter did she appear to be?

A. I would wish not to be particular as to Distance, but she was far drawn upon the Quarter.

Q. Were there any Signals made at Seven o'Clock on board the *Victory*?

A. There were several Pendants thrown out for Ships to come into their Stations.

Q. How was the Vice-Admiral of the Blue then situated?

A. I cannot say I observed any Alteration in his Position from what I had observed before.

Q. Did you see any, and how many, of the Ships bear down from the Vice-Admiral of the Blue's Division?

A. There were some that did bear down, but I cannot be particular.

Q. Were the French Fleet seen on the Morning of the 28th from the *Victory*?

A. At the Opening of the Day I saw only Three Ships, one of which I think I kept my Eye on, at Times, most of the Night.

Q. Did I send Ships to chase them?

A. There were Signals made for Ships to chase.

Q. What Ships?

A. The *Prince George*, the *Elizabeth*, and the *Bienfaisant*—and I believe the *Duke*; but I will not be positive as to the *Duke*.

Q. Was

Q. Was it observed, after the Signal was made to chace, that some of them were crippled?

A. I observed particularly the *Prince George*, which could set no Sail upon her Foretopmast.

Q. Have you any Recollection of the Perplexity and Trouble both to myself and your copying, in penning my Letter relative to the Attack in the Afternoon of the 27th of July, upon the *French Fleet*, so as to convey no Censure upon the Conduct of the Vice-Admiral of the Blue?

A. I do perfectly recollect, that you had great Difficulty, in forming the rough Draught of the Letter, to relate Facts without censuring the Man you then thought your Friend, with whom you was in a Habit of Intimacy, and whose Courage I knew you thought well of.

Prisoner has no further Questions to ask.

Court.

Q. If the Signal for the Line of Battle had been flying on board the *Formidable*, was you in the *Victory* in such a Situation as to see it—or did any other Ships between you and the *Formidable* intercept your View?

A. If it had been flying on board the *Formidable*, as I looked for it with Eagerness and great Attention from many different Parts of the Ship, I think I must have seen it.

Q. From the Time the Signal was thrown out for Ships to Windward to come down into the Admiral's Wake, to the Time of its being hauled down, did you hear the Admiral express his Displeasure at the Ships not bearing down, agreeable to the Signal flying for that Purpose, and that if he could have formed his Line, he would have renewed the Action?

A. The Admiral expressed great Anxiety and Uneasiness at the Ships not bearing down in consequence of the Signal—and it was my Idea, and I believe the Sense of every Body on board the *Victory*, that he only waited for those Ships to renew the Action with the *French Fleet*.

Prosecutor.

Q. At the Time you speak of giving Orders to the *Fox*, do the Hour and Minute stand expressed in your Minute-book?

A. The Time of delivering the Message to the *Milford* is marked at Three Quarters past Four; the hailing the *Fox* succeeded so immediately, that I have not made a Distinction as to the exact Minute, but can say that it did not exceed Five o'Clock.

Q. And the Time of speaking to any other Ship is regularly noted in your Book, except the *Fox*?

A. The *Milford* and *Fox* are both noted particularly.

Q. You have described the *Formidable* to have been astern upon the *Victory's* Quarter, might not the Signal at the Mizzen-peak be out, and you not see it? Are you positive that you actually saw the Mizzen-peak open, and clear of her Sails?

A. I looked at the *Formidable* in different Situations, as I have before said, and I did not see the Signal flying on board her. I knew the Mizzen-peak was the Place for the Signal, and I did not see it.

Withdrew.

Court then adjourned, being past Three o'Clock, till To-morrow Morning at Ten o'Clock.

TWENTY-THIRD DAY.

TUESDAY, the 2d of FEBRUARY, 1779.

COURT met according to Adjournment. Prisoner brought in, and Audience admitted.

Rear-Admiral John Campbell sworn.

Prisoner asked,

Q. What Day was the *French Fleet* first discovered?

A. On the 23d of July.

Q. Do you think the *French* were able to determine the Force of the *English Fleet* on that Afternoon?

A. Certainly not. We could not determine their Number, much less their Force; of course they could not determine ours.

Q. What were the Positions of the *English* and *French Fleets*, on the Morning of the 24th, with respect to each other?

A. The *French Fleet* were at a very considerable Distance on the Weather-bow, some of them much dispersed, and One or Two Ships upon the Lee-bow—the Bulk of the Fleet wide upon the Weather-bow.

Q. Can you inform the Court what Signals I made that Morning, and what were the Objects of them?

A. Perhaps not all with Certainty. There were several Signals made; but it is so long ago, I dare not upon Oath venture to be precise about them. The first Signal was to draw into a Line of Battle, as well as I recollect. Soon after that,

seeing the *French* go off, there was a general Signal to chace; then it was hauled down, and some of the Ships not leaving off Chace, there was a Signal after that to call in all chacing Ships from the Quarter of the Compass they were chacing from.

Q. Do you recollect Captain *Macbride* coming on board the *Victory* on the Morning of the 24th, with his Remarks on the Appearances of the *French Fleet*?

A. Yes, I remember Captain *Macbride* came and hailed the *Victory* to give an Account of some of the *French Ships* which he saw disabled. As it then blew pretty fresh, and we did not hear him distinctly, he offered to come on board, which he was directed to do; he then hoisted his Boat out, came on board, and gave an Account, which indeed we saw, that one of the Ships had carried her Foretopmast away, and I think her Maintopgallantmast—and that another Ship had lost her Maintopfail-yard, if I recollect right; but I am not sure of that Particular, because I did not take notice of that Ship—I took notice of the other—and he wished for Leave to go ahead and chace the Ship without her Foretopmast, in Hopes of being able to cut her off, or of forcing the *French Fleet* to bear down to her Assistance, and thereby bringing on a general Engagement.

Q. Do you recollect the further Orders I gave relative to the *Elizabeth*?

A. The Admiral directed Captain *Macbride* to go and chace that Ship, and to hail the *Elizabeth*

as he passed her, and direct her to go and assist him in so doing. The *Elizabeth* was ahead, one of the nearest Ships to him, and they were to continue the Chace, if they had any Hopes of cutting off that Ship, even though the Signal for the Line of Battle should be made—unless their proper Signals were made to call them off.

Q. Do you recollect Two other Ships of the *French* Fleet that the *English* Fleet cut between and separated from the *French* Fleet?

A. Yes, I recollect Two large Ships that we had in the Morning seen a little upon the Lee Bow—That upon the general Signals being made for the *English* Fleet to chace, and pushing on, those Two Ships went large—We then believed them to be Part of the *French* Fleet, and indeed it was afterwards proved they were.

Q. If the *French* had ever Intentions to give Battle to the *English* Fleet, was not the Junction of those Ships with the Main Body a Temptation for them to bring it on that Morning?

A. Most certainly.

Q. Do you recollect my making the Signal in that Afternoon again for the Line of Battle?

A. Yes, I do; it was made.

Q. Did the *French* Fleet avoid us from that Time every Day?

A. Yes, they did.

Q. If you had commanded an *English* Fleet in the Station the *French* Fleet was with respect to the *English* Fleet, on the 24th, 25th, and 26th July, should you have hesitated one Moment in bearing down, and bringing them to Action, on account of the Wind and Weather, during any Part of that Time?

A. Certainly not. No Man would, I think.

Q. If I had pursued in a Line of Battle, could I have preserved my Nearness to the *French* Fleet, or even kept Sight of them?

A. I think you could not.—We were more than once in danger of losing Sight of them, even in the Manner we pursued them—And had one Morning actually lost Sight of them for an Hour and upwards.

Q. Give an Account to the Court at Day-light on the 27th in the Morning, relative to the Position of the *English* Fleet and the *French* Fleet, and about what passed till the *French* Fleet tacked to the Southward?

A. At Sun-rise in the Morning, or about that Time, the *French* Admiral was nearly upon the Beam of the *English* Admiral; I reckon better than Three Leagues to Windward.—The Vice-Admiral of the Red, and his Division, was upon the Weather Quarter of the *Victory*.—The Vice-Admiral of the Blue, a little before the Lee-Beam of the *Victory*, about Three Miles to Leeward, and the Ships of his Division under easy Sail accompanying him, the Vice-Admiral himself having his Mainfail up—Therefore the Signals for all the Two-decked Ships of his Division that were going under easy Sail, were made to chace to Windward, in order to get them up to the Main Body of the Fleet with the greatest Expedition; and soon after they had made sail, the Vice-Admiral set his Mainfail and Stayfail, and, I think, his Jibb and Maintopgallant-fail, in particular, I recollect. Between Eight and Nine, the *French* Fleet began to go upon the other Tack, and I believe were all about by Nine, or a little after.

Q. When that Signal was made for the Ships of the Vice-Admiral of the Blue's Division to chace, was there any greater Indication of the *French* Fleet intending to come to Action on that Morning than on the preceding Days?

A. No, by no Means.

Q. What would have been the Consequence if I had formed the Line of Battle, instead of closing with the *French* Fleet in the Manner I did?

A. We should have increased our Distance from them as much as ever it had been from the first Time of our seeing them.

Q. Would that have been the Way to have brought them to Action?

A. No, quite the Reverse.

Q. Acquaint the Court what Time I tacked; and of our Transactions from that Tacking to my passing the Rear of the *French* Fleet?

A. The whole of the *English* Fleet tacked together by Signal at, I think, Ten o'Clock, or a little before, and the Wind very soon after veering about Two Points, we hoisted our Stayfails and set the Maintopgallantfails, in order to near the *French* with the greatest Expedition, whom we imagined to be then pretty near ahead, we had then lost Sight of them in a thick dark Squall.—When the Squall cleared so away as for our next seeing them, which was in about Three Quarters of an Hour, we saw they had altered their Position, or were then altering it to the contrary Tack, the Larboard Tack, and were at no great Distance from Sir Robert Harland's Division, who was then the Van of the Fleet. In a very short Time afterwards a Firing began in the Van of the Fleet, whereupon the Admiral immediately ordered the Signal to be made for engaging, and took me to the Gangway, and observed to me; that several of the *French* Ships seemed to be in great Confusion, and his Expression was, he believed they were running on board each other. We pressed on with all the Sail we had then on board, attended by all the Ships of our own Division pretty well connected, till we came abreast of the *French* Admiral. We then hauled our Mainfail up just before we began to fire, and immediately engaged, and continued to engage the Ships in Succession that were astern of him, till we had passed the whole of the *French* Line.—One Thing I should have observed, that the Maintopgallantfail was taken in very speedily; because we observed one of our Ships to Windward take her's in, and I thought the Squall was too strong for her.

Q. In drawing near to the *French* Ships and passing them, did they appear to be in any Regularity?

A. The Van of the *French* Fleet appeared to be in a pretty regular Line, except in Point of Distance—they were not at regular Distances from each other, but the rest of the *French* Fleet was by no means in a regular Line.

Q. I am charged with having stood to a great Distance beyond the Enemy, before I wore to stand towards them again, I desire you will inform the Court, whether it was practicable or expedient for me to wear sooner than I did?

A. No, it was not.

Q. When I did wear, were any of the Ships about me able to wear with me, or did they?

A. No, none of them wore immediately, that I saw.

Q. Had you any Reason to believe, from any Thing you saw or was acquainted with, that the Vice-Admiral of the Blue was at any Time exposed to be cut off?

A. No.

Q. When was the Signal for Battle hauled down?

A. Orders were given to haul it down immediately upon the ceasing of the Fire, as the Ships were then out of engaging Distances.

Q. As I am charged with hauling it down at that

that Time, was it in your Judgment proper to be kept abroad any longer?

A. No, it was not.

Q. Did I make the Signal for the Line when I hauled down the Signal for Battle?

A. The Signal for the Line was immediately made upon our wearing to the Larboard Tack.—I do not exactly know the Time, but it was on our wearing to the Larboard Tack, in a very short Space of Time?

Q. Was that the properest Signal I could make to collect the Fleet together to renew the Fight?

A. Undoubtedly it was.

Q. I am charged with having shortened Sail after I wore to stand towards the Enemy, instead of advancing towards them, I desire to know if I had Ships enough collected with me, to admit of my advancing faster than I did?

A. No; the whole Time that the Admiral remained upon the Larboard Tack standing towards the Enemy, he had not one of the Fourteen Ships stationed ahead of him, that had got into their proper Stations. The Vice-Admiral of the Blue indeed was ahead of the *Victory*, after we wore towards the Enemy, but instead of remaining there, and repeating the Signal for the Line to call the Ships of his Division into their Stations, he passed on the Starboard Tack astern of the *Victory*, in direct Disobedience to the Signal then flying.

Q. Where was the Vice-Admiral of the Red at this Time, and what Number of Ships of his Division were with him?

A. The Vice-Admiral of the Red was upon the Weather-bow of the *Victory*, at a considerable Distance, but I do not know the Number of Ships he had with him, I did not count them.

Q. Where was the *French* Fleet at this Time?

A. I do not know what Point of Time the Admiral means.

Q. Before the *French* Fleet wore?

A. They were right ahead of the *Victory*, as near as I can recollect, rather to Windward.

Q. As the Two Fleets were then situated, was the Signal appointed by the Thirty-first Article of the Fighting Instructions applicable to the Purpose of directing the Vice-Admiral of the Red to lead on the Larboard Tack, and for the rest of the Fleet to form?

A. No, certainly not.—The Signal directed by the Thirty-first Article has a precise and determined Signification affixed to it, and can be applicable to nothing else.

Q. While I was on the Larboard Tack, did you see the *French* Fleet in Disorder?

A. No, I did not see them in any other Disorder, than what must arise from a Fleet's changing from one Tack to another, which they did a little Time before we wore.

Q. Had I at any Time while I stood on the Larboard Tack a sufficient Force collected to renew the Fight?

A. I have already said that the whole Time you were on the Larboard Tack, not one of the Ships stationed ahead of you got into their Station, and I do not recollect that there were more than Four at most of those stationed astern had got into their station.

Q. Was the Signal for the Line flying all the Time I was upon the Larboard Tack to collect them?

A. Yes, the Signal was hoisted very soon after we got upon the Larboard Tack, and continued flying from the Time it was hoisted.

Q. Under these Circumstances, did I not do the utmost in my Power to take, sink, burn, and destroy the *French* Fleet?

A. I think you did.

Q. I am charged with having wore at this Time, and made sail directly from the Enemy, and leading the whole *British* Fleet away from them, I desire you will explain all you know of this Transaction?

A. On seeing the *French* Fleet wear and stand towards the *English* Fleet, the Admiral directed Captain Sutton of the *Proserpine*, who was then on board, to go to Vice-Admiral Sir Robert Harland, and direct him to form in the Van, as we had none of our Ships pushing ahead of us then in their proper Station; but before Captain Sutton put off in his Boat from the *Victory*, the *French* Fleet edged away, and seemed to point to Four or Five of our Ships that were a great Way to Leeward upon our Lee-quarter; whereupon the Admiral ordered the Signal to be made for wearing, we wore and stood down to succour those Ships, the Signal for the Line of Battle being still kept flying, and after we were about, keeping much away, I remarked to the Admiral, that we should join some of our Ships faster if we did not keep so much away, whereupon he took me to the Gangway and said, Do not you see those Ships, pointing to Leeward—I must not receive an Affront there; and so ordered the Ship to be kept away to succour them.

Court asked,

Q. Were there any Ships near you at that Time?

A. Yes, several of our own Division were near us at that Time, and more with us that followed us down; they had been collecting the whole Time we were upon the Larboard Tack.

Prisoner asked,

Q. Was the Signal for the Line still kept flying?

A. I have said it was.

Q. What Sail did I carry at this Time?

A. To the best of my Recollection, double-reefed Topails, a Foresail, indeed the Maintop-sail was not bent when we wore. We had, while we were on the Larboard Tack, unbent the Maintop-sail, which was a good deal wounded with Shot, seeing that we could do so without Loss of Time, before the Ships could be collected, to enable us to advance faster upon the *French* Fleet, and we were just beginning to haul it out to bend it, as we wore to go down to succour those Ships, and it was bent with as much Expedition as any Maintop-sail I ever saw.

Q. Do you recollect my ordering the *Milford* to Sir Robert Harland, to direct him to leave the Rear, and to form ahead, and at what Time?

A. I had forgot to mention that Captain Sutton was ordered (upon our wearing to go to the Succour of the disabled Ships) to go and direct Sir Robert Harland to form in our Rear, while we were going down to those Ships; and I remember Sir William Burnaby was ordered at, I think, Five o'Clock, to go and direct Sir Robert Harland to resume his Station in the Van.

Q. Do you recollect at the same Time my ordering the *Fox* to go to the Vice-Admiral of the Blue?

A. I do.

Q. What Orders were sent by the *Fox*?

A. Captain Windsor was directed to go to the Vice-Admiral of the Blue, and tell him, the Admiral wanted him to come down with all Expedition with the Ships of his Division, as he only waited for that being performed to renew the Action.

Q. Did you add any Thing to that Message to Captain Windsor as he was going off?

A. I did add a little to the Message, but I believe Captain *Windsor* did not hear me, for the People on board his Ship were making a great Noise at that Time, and he was then increasing his Distance from us—he was then sheering from us.

Q. Do you recollect what the Words were?

A. Yes, I desired him to tell the Vice-Admiral that we had long waited for him.

Q. Do you recollect my calling from my Gallery, at the Time the Message was delivering?

A. Yes, I heard the Admiral's Voice, but I cannot be precise as to what he said; I repeated the Message myself to Captain *Windsor*, I attempted it first from the Quarter-deck, I then went into the Gallery, because I thought I should be better heard there, and then I heard the Admiral's Voice from his Gallery.

Q. Where was the Vice-Admiral of the Blue at this Time?

A. He was wide upon our Weather-quarter, at a considerable Distance.

Q. After being on the Starboard Tack, did I not the whole Afternoon express to you my Uneasiness as well as Surprise at the Vice-Admiral of the Blue's remaining to Windward, without making any Effort to come down with his Division in Obedience to Signal?

A. You frequently did, and I remember very well upon one of the Occasions, I expressed my Apprehension of the Vice-Admiral of the Blue's being wounded, as I said, I was sure I thought the *Formidable* could not behave so if he was in Health.

Q. Was not my constant Conversation with you, that I only waited Sir *Hugh Palliser's* coming down to renew the Attack?

A. It was.

Q. Did I ever seem to have given up the Design of re-attacking till Evening was coming on?

A. No.

Q. Do you recollect what Degree of Sail I made in the Evening to regulate the Fleets going by Night?

A. Yes, at Eight o'Clock we took in the third Reef in the Topails, and handed the Mizentop-sail, that it might not obstruct the Sight of the Top Light from the Ships stationed astern, and we went with our two Treble-reefed Topails and Foresail all Night.—The French Fleet reefed immediately after we began to reef.

Prisoner.

May I beg the Indulgence of the Court to have the *Robust's* Log book read to that Time where the Alteration is made?

The Day's Remark was read accordingly.

I must observe that the Alteration speaks for itself. After Admiral *Campbell's* Evidence to this particular Matter it requires no Comment.

Q. You have heard the Fifth Article read, wherein I am charged with not having pursued the Enemy on the Morning of the 28th, I desire you will inform the Court all you know concerning it.

A. On the Morning of the 28th, the French Fleet were not in Sight that I know of, but there were Three French Ships at a considerable Distance from each other, and a little to Leeward of our Rear Ships, but before we could well make out what they were in the *Victory*, they had bore away, and were crowding Sail to Leeward, which was the first confirmation I had of their being French Ships, the Signal was immediately made for some of our Ships to chase them, as I recollect the *Bienfaisant*, which was the Ship we found to be the nearest.—We were trying to look for Ships most proper to chase—and the *Prince George*, the

Elizabeth, and I think the *Duke's* Signal (which had not suffered in the Action), was made.—I think we at the same Time bore away in the *Victory*, and as well as I recollect, made the Signal for the Fleet to spread North and South, but the *Prince George* and *Elizabeth*, neither of them made Sail like chasing Ships, and indeed the *Elizabeth* steered towards us, and soon after hailed us, and told us that she could not carry chasing Sail—the Admiral in a short Time called in the chasing Ships, as the Three French Ships had got a great Start of ours before the Signal could be made for them to chase, and we soon after brought to upon the Larboard Tack, and made the Signal for Ships to set up Rigging.

Q. If I had pursued the Enemy that Morning with the Fleet in the Condition it was after the Action, the Wind and Weather as they then were, was there any Probability of my getting up with the French Fleet before they reached the Port of *Brest*?

A. I am clearly of Opinion there was not, in case of pursuing with the Fleet in the State they were in, for they could not be kept together, and carry chasing Sail; the disabled Ships must have fallen astern, as they were not able to carry chasing Sail. One Thing I beg Leave to observe to the Court, that when I say disabled Ships, I only mean disabled in their Masts and Rigging which prevented their carrying chasing Sail; I do not know they were otherwise disabled.

Q. While I was upon the Starboard Tack in the Afternoon of the 27th, under the Degree of Sail you have described, and with the Signal out to form my Line, had it the least Appearance of a Flight?

A. Certainly not.

Q. Did you ever observe the Signal for the Line of Battle repeated on board the *Formidable*, at any Time of the Day or Evening of the 27th of July?

A. No, I think it would have been very improper to have been repeated, unless it had been obeyed by the *Formidable*; it would have been very un-Officer like to have repeated it without obeying it at the same Time.

Q. You have heard the Articles of the Charge read, therefore I desire you will state to the Court any Instances, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th and 28th July?

A. I never saw any Negligence either then or at any other Time while I served under the Admiral, and I never served under any Officer who was more diligent in the Execution of every Part of his Duty, as far as came within my Observation.

Q. Did not I give Instructions upon my Sailing again with the Fleet, to direct an inverted Line, when I should see Occasion for it, by way of providing for calling Ships into the Situation of changing the Order of their Line, when I thought it for public Advantage?

A. Yes, you did.

Q. Do you recollect my giving this additional Fighting Instruction that I shall mention, at Sea after Sailing, in these Words:

“ In the Line of Battle the Flag of the Admiral commanding in Chief, is always
“ to be considered as the principal Point of
“ Direction for the whole Fleet in forming
“ and preserving the Line.”

A. Yes, you did.

Prisoner has no further Questions to ask.

Court asked,

Q. Do you know at what Time the Vice-Admiral

miral of the Blue got into his Station on the 27th at Night with his Division?

A. The Vice-Admiral of the Blue did not get into his Station while it was Light enough to see he had done so.

Q. Did you observe whether the Vice-Admiral of the Blue carried distinguishing Lights at the Bowsprit End that Night?

A. I did not see any Thing of the Vice-Admiral of the Blue from the Time the Day shut in till the next Morning?

Q. What Distance was he in the Morning of the 28th in the Line from the Center Division?

A. I did not take Notice of him. The Three French Ships to Leeward engrossed my Attention at that Time.

Prosecutor asked,

Q. You have mentioned when the Admiral was standing with his Head towards the French, that the *Formidable* was the only Ship ahead of him.—Was not the *Formidable* laying with her Head after the Enemy, within Gun-shot, till the Signal for Battle was hauled down, and the *Victory* shortened Sail, and the Admiral was at that Time at a great Distance?

A. I never saw the *Formidable* upon the Larboard Tack after passing the French Line, nor did I ever hear that she had been upon the Larboard Tack till the Vice-Admiral told me so himself in Mr. Keppel's House in London.

Q. When was the Time you first saw her, which enables you to say that she was ahead of the *Victory* when you was standing that Way?

A. A little before the Two Ships met, the *Victory* upon the Larboard Tack, with her Head to the Enemy, and the *Formidable* upon the Starboard Tack approaching the *Victory*. I then saw the *Formidable*, and continued to look at her till she passed the *Victory* to Leeward.

Q. Then in the *Victory*, with her Head towards the *Formidable*, as you have described, was it possible to see the Signal for the Line out from the *Formidable* on board the *Victory*, till she came so near as to open her After-masts.

A. The *Victory* was not the Ship to which the Vice-Admiral should have looked for the Signal, there was a Gun fired with the Signal when it was made, and that ought naturally to have directed him to look to the repeating Frigate, where the Signal was made.

Q. Was not Captain Marshall the Captain of the repeating Frigate, on board the *Victory* at the Time the *Formidable* came close to her?

A. I do not recollect: I remember Captain Marshall was on board the *Victory* at the Time we wore to go down to succour the disabled Ships, but that was at least a Quarter of an Hour after the *Formidable* had passed the *Victory*, I really do not know whether he was on board at the Time the *Victory* and *Formidable* passed each other.

Q. Whilst he was on board, was not his Frigate near the *Victory* in Readiness to take up the Captain's Boat, steering as the *Victory* did?

A. I believe she was—I cannot speak precisely to it—I did not take much Notice of it.

Q. That being the case, was not the Signal on board the Frigate equally imperceptible to the *Formidable* as it was on board the *Victory*?

A. The Signal had been repeated by the Frigate long before the Captain came on board the *Victory*; but indeed that Question I cannot answer—The People on board the *Formidable* should answer that Question.

Q. Whether or no the Signal for wearing, a blue Pendant at the Ensign-staff, was not flying

on board the *Victory* before the *Formidable* came the Length of her?

A. I cannot say it was not, but I do not believe it was; but indeed it is impossible to speak precisely to these Points at such a distant Period.

Q. Do you recollect that when the Captain of the repeating Frigate left the *Victory*, that it was at the Time she was actually wearing?

A. I really do not recollect when he left the *Victory* precisely; I only remember he was on board, from a Circumstance of his being on the Quarter-deck, and helping to haul out the Main-top-sail.

Q. You have said before that was the Time of wearing?

A. Yes; it was after we wore, to the best of my Remembrance.

Q. As you have said you cannot positively say that the Signal for Wearing was out before the *Formidable* came the Length of the *Victory*, nor when she was abreast of her, whether you are not very precipitate in charging me in this Court with acting in direct Disobedience to Signals?

A. No; I do not think so: The Signal for the Line had been made full Three Quarters of an Hour before the Signal for Wearing was made; and even if the Signal for Wearing was out before the Vice-Admiral passed the *Victory*, he still was disobeying Signals, because he should not have wore till the *Victory* wore.

Q. Do you mean to say, although it was impossible for him to have seen the Signal for the Line till that Time when he saw the Signal for Wearing was out?

A. I never meant to reproach any Man with disobeying a Signal he had never seen—It was the *Formidable's* Duty to have seen that Signal, and I think they might have seen it, if they had looked properly for it.

Q. Is it possible to see such a Signal on board a Ship directly End-on?

A. When there are Two Ships with the same Signal flying, and one considerably to Windward of the other, I think no Ship can be so situated as not to be able to see it on board one or the other of them.

Court asked,

Q. Where was the repeating Frigate when the Signal for the Line was first made?

A. I do not exactly know where she was when the *Formidable* passed us, but I had seen her with the Signal for the Line flying considerably to Windward—I believe if the *Formidable* did not see that Signal, she was the only Ship in the Fleet that did not?

Q. I think you have said the *Formidable* passed to Leeward of the *Victory*, when the *Victory* was with her Head to the Northward towards the French Fleet, could you see her then in a proper Position so as to distinguish whether she had the Signal for the Line flying on board her?

A. I saw the whole of her as she passed. The Signal for the Line was not flying on board her.

Prosecutor asked,

Q. Did you not see it very soon after that hoisted on board the *Formidable*?

A. No; I did not see it at any Part of the Day hoisted on board the *Formidable*; I looked frequently at her. I had much Occasion to look at her, both with the Glass and without the Glass, and I saw her hoist the Blue Flag at the Mizzen-peak, a Signal for Ships to bear down, but I never saw the Signal for the Line hoisted on board her the whole Day. I have said so before.

Q. Did not the *Victory* wear very near under

the *Formidable's* Stern, and run to Leeward of her?

A. I have before said, the *Formidable* passed the *Victory* to Leeward, and at no great Space of Time after, we wore, and by edging away to cover those Ships to Leeward, we of course got to Leeward of the *Formidable*.—I did not take Notice how far we were astern of the *Formidable*; when we crossed her Wake; I cannot speak precisely to the Distance, we were not far.

Q. At the Time that the Blue Flag was hoisted on board the *Victory*, which you say the *Formidable* repeated, was it not within less than Half an Hour after making the Signal for Wearing?

A. No; to the best of my Remembrance, it was not till within an Hour after we had wore.

Q. But supposing it was only Half an Hour, what Distance could the *Formidable* then be from the *Victory*?

A. I really cannot answer Questions upon Supposition, that must depend upon the Sail the Two Ships carried, and the different Courses steered.

Q. Whether the *Formidable* and some of the Vice-Admiral of the Blue's Division were not the last Ships that came out of Action?

A. Certainly they were.

Q. Inform the Court of the Reason why the Admiral thought proper to order the Vice-Admiral of the Red's Division to take the Station of the Vice-Admiral of the Blue's at that Time, being just after the Blue Division came out of Action?

A. Because neither the Vice Admiral of the Blue's Division, nor Center Division, were in a Position then immediately to take it; but when the Admiral ordered the Vice-Admiral of the Red to resume his own Station ahead, the greatest Part of the Ships belonging to both Divisions were then in a Condition to resume their Stations as far as appeared on board the *Victory*.

Q. You have mentioned the Orders sent by the *Fox* to the *Formidable*.—Whether in the Minutes kept on board the *Victory*, the Hour and Minute is noted of the Delivery of that Order?

A. Yes; I have always understood it was in both of them; and I have in one of the Minutes read it myself.

Q. When the Message was sent to me to acquaint me the Admiral was waiting—Was the the Admiral then waiting—Had he not the same continued Sail at that Time which he had before?

A. Yes; we had the same Sail from the Time we set our Maintopail, after bending it, till Eight o'Clock at Night.

Q. Did the *Victory* ever lay to that Afternoon?

A. No; I have answered that before:—We went with the same Sail.

Q. Was it not known on board the *Victory* before Twelve o'Clock that Night that the *French* Fleet had bore away?

A. No; it was not known till Day-light, and was then a Matter of Surprise to every Body.

Q. Were any Frigates stationed between the Two Fleets that Night to give Notice of their Motions to the Admiral, as had been done on former Nights?

A. No; nor do I know any good Purpose it would have answered, for had the Admiral known of the *French* Fleet bearing away at the Time they did, I do not know of any Step he could have taken to have prevented it.—His Signals had been so ill obeyed by the Vice Admiral of the Blue during the Day, that I think he durst not make any chasing Signal in the Night to have pursued the Enemy, at the Risk of finding a

great Part of his Fleet lying to Windward of him in the Morning.

Q. In the Morning you say the Signal was made for some Ships to chase the Three *French* Ships, and that the *Duke* was one, was not she remarkably the heaviest sailing Ship in the Fleet.

A. When I mentioned the *Duke's* Signal being made, I gave the Reason for it; the Difficulty we found in collecting the Ships after passing the *French* Line on the preceding Day, gave us good Room to believe that many of the Ships were crippled a good deal in their Masts and Yards; we were pretty well assured the *Duke* had not suffered in that Way, and that was the Reason her Signal was made.

Prosecutor has no further Questions to ask.

Withdrew.

Captain Samuel Marshall called in again.

He observed to the Court, that he had not any Papers with him, not expecting to be called.

Prisoner asked,

Q. Did you see the Signal for the Line of Battle hoisted on board the *Victory* whilst on the Larboard Tack after the Action?

A. In my Evidence I have said, to the best of my Memory, that it appeared so to me, and by my Minutes that I had repeated it.

Q. Did you keep it abroad so repeated all the Time I stood on the Larboard Tack?

A. I think so.

Q. Did you see the *Formidable* whilst I was standing on the Larboard Tack?

A. Yes.

Q. How was the *Arethusa* situated with respect to her?

A. I tacked on the *Formidable's* Weather Quarter.

Q. Was the Signal for the Line of Battle then flying on board the *Arethusa*?

A. I think so.

Court asked,

Q. Was it usual for you to keep the Signal out as long as it was out on board the Admiral?

A. Yes; I endeavoured to do it.

Prisoner has no further Questions to ask.

Prosecutor asked,

Q. As Captain Marshall has said he did not know of his being called, I should be glad to know when and by whom he received Notice to attend?

A. I received Notice from the Admiral that he would want me, just now.

Withdrew.

Prisoner.

I would wish to know whether the Prosecutor admits, or denies, or puts me to prove, that the Paper signed "*Hugh Palliser*" in the *Morning Post* of the 4th of November is his.

Prosecutor admitted it.

Captain Jonathan Faulknor of the Victory sworn.

Prisoner asked,

Q. What would have been the Consequence if I had formed a Line of Battle instead of closing in with the *French* Fleet as I did in the Morning of the 27th of July?

A. That they never would have been brought to Battle on that Day.

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Q. What

Q. What Part of the *French Fleet* did the *Victory* begin Action with?

A. The *Victory* fired some Shot into the Ship that led the *French Admiral*, the *Bretagne*: We began close Action with the *Bretagne*; Orders were given to reserve the Fire for the *French Admiral*.

Q. Was your Ship's Company in good Order, obedient, and observing that Day?

A. In every Respect they were so.

Q. Was the Center of the *French Fleet* as we came up with them in Appearance to you in any regular Order?

A. No; they were not in regular Order, they were in sailing Order, in that Sort of Order that is nearest to a Line, but not what an Officer would call a Line, who is used to any Thing of a regular Line.

Q. Were there more *French Admirals* than one together?

A. There was only one Ship between the Admiral in the *Bretagne* and another Admiral; both those Admirals were in Three-decked Ships.

Q. Did the Van of the *French Fleet* keep their Wind and avoid nearing the *Victory* as she passed?

A. They kept their Wind as close as Ships could possibly do, in my Opinion.

Q. Did they pass out of Gun-shot, and how much?

A. The Fourth or Fifth Ship ahead of the *Bretagne* began their Fire on the *Victory*.—The Shot of the First of those Ships scarce reached the *Victory*. The Ships that were ahead of those Four or Five were still further off.

Q. I am charged, after I came out of Action, with having stood to a great Distance beyond the Enemy, before I wore and stood towards them again—I desire you will inform the Court, whether it was practicable for me to wear sooner; and when I did wear, whether any of the Ships of my Division were able to wear with me?

A. The *Victory* was wore as soon after she came out of Action as possible; I believe sooner than many of the Ships could have seen the Signal—I do not recollect seeing any of the Admiral's Division wear at that Time.

Court asked,

Q. Give an Account of the principal Damages in the *Victory*; in her Masts, Sails, and running Rigging.

A. The *Victory* had a large Shot through the Center of the Mainmast, about Eight Feet above the Quarter Deck—Another Shot in the Mainmast, in the Wake of the Mainyard—The Mizemast shot through the Center, with a large Shot about Eight Feet above the Poop Deck—The Bowprit had a Shot through before the Step—The Mainyard a Shot in the Wake of the Slings—The Mizemast shot in the Lower Arm, so as to make it necessary to cut it off immediately after we were out of Battle, about Ten or Eleven Feet—The Jibb-boom shot about Three Feet without the Cap—The Maintopmast-yard, upon the Starboard Quarter, had a Wound in it with a grazing Shot an Inch or Two deep—Two of her Lower Midship Starboard Ports were very much shot—As to the Shot in the Hull, I really cannot say.

As to the Standing and running Rigging—The Starboard Foretopsail-sheet and Bowlines shot away—The Foretopmast-stay—The Collar of the Forestay—One of the Gammonings of the Bowprit—Six Foreshrouds—Two Forejeer-blocks, One at the Yard, and One at the Masthead—The Foretopsail Sheets—The Maintopmast-stay—The Mainpreventer-stay—Two Foretopmast Backstays

—Seven Mainshrouds—Five Maintopmast Shrouds—The Main Trusses, both shot away—Four Mizem Shrouds—Two Mizemtopmast Backstays, and several Braces, Bowlines, &c. Our Top-sails were very much shot, particularly our Maintop-sail—The running Rigging was shot, as any Sea Officer would suppose, proportioned to the other Damages.

Prisoner asked,

Q. Had you any Reason to believe, from any Thing you saw, that the Vice-Admiral of the Blue was, at any Time, exposed to be cut off?

A. No.

Q. Do you recollect when the Signal for Battle was hauled down?

A. I gave the Orders for that Signal being hauled down, having received them from Admiral Campbell, while the *Victory* was on the Starboard Tack. It was not reported to me, that it was hauled down; nor did I see it hauled down; therefore I do not presume to inform the Court when it was hauled down.

Court asked,

Q. At what Time did you receive the Orders for the Signal being hauled down?

Looked at his Minutes.

A. About Half past One, or something later.

Q. I suppose, at that Time, you imagined your Commands was obeyed, or you would have repeated them?

A. Certainly; but I was much employed in my Preparation to wear the *Victory*, which took my Attention off from that particular Business.

Prisoner asked,

Q. Was the Signal made for the Line immediately, after the *Victory* got upon the Larboard Tack?

A. Directly.

Q. Was it kept flying till she wore to the Starboard Tack again?

A. It was.

Q. Were any Ships got into their Station in the Line before the *Victory* did wear to her Starboard Tack again, conformable to that Signal?

A. The Ships that should have led the *Victory* were not ahead of her; some of those which were astern might probably be near their Station to follow the *Victory*.

Q. I am charged with having shortened Sail after I wore to stand towards the Enemy, instead of advancing towards them, I desire to know if I had Ships enough collected with me to admit of my advancing farther than I did?

A. No.

Q. You remember the Maintop-sail being unbent; did not that enable the other Ships to close up with me, and was the Maintop-sail fit for Service?

A. The Maintop-sail was not fit for Service; and by its being unbent, the Ships we left to the Southward astern of us had it certainly more in their Power to draw nearer to us.

Q. Was that Maintop-sail, being unbent, of any public Detriment to the Business of that Moment?

A. It was not—it certainly gave an Opportunity for Ships to get ahead of us that had it in their Power.

Q. Had any Ships it in their Power to get ahead of us (even with the Maintop-sail unbent) of our own Division, or even of the Vice-Admiral of the Blue's Division, before we wore to the Southward again?

A. I have already stated, that none had got ahead of the *Victory*, and I should therefore presume that none had it in their Power—As the Signal

nal for the Line of Battle was out, every Man would get into his Post as fast as possible.

Q. Did your People replace soon the Maintop-sail, upon its being unbent, and in a Seaman-like Manner?

A. The Maintop-sail was replaced in little more than Half an Hour.

Q. After the Maintop-sail was replaced, did not you and all the Officers, notwithstanding the Damages you have stated, think the *Victory* fit for Action again?

A. By the Time the Maintop-sail was replaced, the Rigging was repaired in such a Manner as is done after Action, the Powder of our different Magazines replaced, and she was then as fit for Action as she could be.

Q. Did you see the *French* Fleet wear and begin to form their Line on the Starboard Tack?

A. I did.

Q. Had I at that Time a sufficient Force collected with me, to have stood on to interrupt their forming?

A. I am sure you had not.

Q. At what Time did I wear to the Southward?

A. A little past Three.

Q. Did I keep the Signal for the Line of Battle flying, after being upon the Starboard Tack, to collect and form the Ships.

A. Yes, the Signal was not hauled down.

Q. What Sail did I carry on the Starboard Tack?

A. After the Maintop-sail was bent, double reefed Top-sails, Fore-sail, Mizzen, and Mizzen-stay sail.

Q. Do you recollect Sir *Robert Harland*'s coming into the Rear with his Division, whilst on the Starboard Tack?

A. I do.

Q. Do you recollect my ordering Sir *Robert Harland* to leave the Rear and form ahead, and at what Time, and by what Ship?

A. About Five o'Clock the Signal was made for the *Milford* and *Fox* to come within hail; the *Milford* came up upon the *Victory*'s Lee-quarter, when I hailed him by Order of the Admiral, and directed him to go to Sir *Robert Harland* and tell him, that it was the Admiral's Direction that he should make Sail and form ahead, and make a Press of Sail to do that Service.

Q. Do you recollect my ordering the *Fox* at the same Time, to go to the Vice-Admiral of the Blue?

A. I recollect the *Fox*'s coming on the Star-board-quarter of the *Victory*, and she was hailed by Somebody in the Stern Gallery, the Message I did not hear given, but I observed the *Fox* immediately to make Sail to Windward on his Larboard Tack, keeping his Wind close and carrying a Press of Sail.

Court asked,

Q. Was that at the same Time you was employed in hailing the *Milford*?

A. It was not.

Q. How long after?

A. About Five to Seven Minutes—the Two Ships Signals were thrown out at the same Time; the Position of the *Milford* brought her up first.

Q. Do you recollect the Service the *Fox* was sent upon?

A. It was the Language of the *Victory*'s Quarter-deck that she was sent to the Vice-Admiral of the Blue; I have said I did not hear the Message.

Prisoner asked,

Q. Where was the Vice-Admiral of the Blue at that Time?

A. From Two to Three Points abaft the *Victory*'s Weather-beam, I should suppose about Two Miles to Windward.

Adjourned, being Half past Three o'Clock, till To-morrow at Ten o'Clock.

TWENTY-FOURTH DAY.

WEDNESDAY, the 3d Day of FEBRUARY, 1779.

COURT met according to Adjournment. Prisoner called in, and Audience admitted.

Captain Faulknor again called in.

Prisoner asked,

Q. Did you observe the *Formidable*'s Foretop-sail unbent in the Afternoon?

A. I did.

Q. How long was it so?

A. Near or quite Four Hours.

Q. Did you observe any other Damages in that Ship?

A. The *Formidable* had all her Masts and Yards in their Places, she had none shot away that I saw.

Q. Did you ever understand I had given up the Design of re-attacking the Enemy that Afternoon?

A. Quite otherwise—it was my Opinion you did mean to re-attack that Afternoon.

Q. Did you observe any Effort on board the *Formidable* to obey the Signal after the *Fox* went to her.

A. I never did observe any Efforts made on

board the *Formidable*, either before the *Fox* went to her or afterwards.

Q. Did you, during the Afternoon, at any Time see the Signal for the Line of Battle repeated on board the *Formidable*?

A. I did not: I saw it repeated on board the *Arctus*, the repeating Ship which was then on the *Formidable*'s Lee-bow near her.

Q. At the Time you observed the *Formidable* in the Afternoon, was she so well up that you could observe her Lee-ports one from the other?

A. I looked at the *Formidable* many Times in the Course of that Afternoon with my Glass, and could have counted her Guns, if I had been asked to have done it, at any Time.

Q. In the Evening of the 27th, what Sail did I establish for the Night?

A. Two treble-reefed Top-sails; that is, the Fore and Maintop-sail treble-reefed—Fore-sail, Mizzen, and Mizzen-stay-sail; the Mizentop-sail handed at the usual Time of doing it in the Fleet, which was before the Day closed.

Q. Were the distinguishing Lights kept burning all Night?

A. I gave Orders that every Socket in those Lights

Lights should have a Candle; it had been the Custom to keep one out, but that Night instead of Three there were Four in each Lanthorn—added to the common Lights of the Admiral commanding in Chief, we carried an exceeding good Light at the Bowsprit-end, which I caused to be looked at several Times.

Q. Was there any Increase of Sail during the whole Night?

A. None, no Alteration.

Q. Did you see the *French* Fleet bear away and go off in the Night?

A. I did not: between Ten and Eleven it was reported to me that a Rocket had been thrown into the Air, on which I came out of Admiral Campbell's Cabin, and then the different Lights of the *French* Fleet appeared to me in the same Position they had done before; I was on the *Victory's* Quarter-deck Four or Five Times during the Middle Watch, and still saw Lights in Two or Three different Places to Leeward.

Q. In the Morning of the 28th, what Part of the *French* Fleet were seen?

A. I did not see or hear of any more than Three Sail under our Lee, the northernmost of which I took to be a large Line of Battle Ship, the southernmost a very large Frigate, and a small Frigate between them, pretty near at equal Distances from each other.

Q. Did I send any Ships to chase them?

A. The Signal was made for the *Prince George*, *Bienfaisant*, and *Elizabeth* to chase to the North-east; they bore then from us rather to the Northward of the East.

Q. Was it not soon after discovered that the *Prince George* and the *Elizabeth* were too much crippled for chasing?

A. The *Prince George* and the *Elizabeth* hailed the *Victory* and accounted to the Admiral for their not carrying more Sail. The *Prince George* complained I think of the Foremast, and the *Elizabeth*, I think, of her Topmast.

Q. If I had chased with the Fleet to the Eastward, was there any Probability of getting up with the *French* Fleet before they reached the Port of Brest, the Wind, and Weather, and the Ships crippled as they were?

A. Not the smallest; if there had, I am sure the Admiral would have pursued them?

Q. When the Fleet had brought to with their Heads to the Northward, how many Ships made Signals for setting up Rigging?

A. I did not particularly count them, but I should suppose from Ten to Fifteen at least.

Q. You have heard all the Articles of the Charge read, I desire you will therefore state to the Court any Instances, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I cannot state any Instances to this Court wherein the Admiral did not conduct himself like a great and able Sea Officer.

Q. Did I not send you with my public Dispatches to London?

A. The Admiral did.

Q. Do you recollect whether I instructed you with any Message to the Earl of Sandwich with my public Letter?

A. Yes, you did, and this is it, I beg to read it.

"Give my Compliments to Lord Sandwich,
"and tell him, I have more to say to him
"than I think proper to put in my Public Letter; and if it is his Lordship's
"Pleasure to ask me any Questions, I am
"ready to wait on him."

This Message I repeated twice to Lord Sandwich.

The Prisoner having done with the Witness, and neither the Court or Prosecutor having any Questions to ask, he withdrew.

Captain George Stoney, late Second Lieutenant of the Victory, sworn.

Prisoner asked,

Q. Had you the Morning Watch on the 27th of July?

A. I had.

Q. Do you recollect the Signal being made for several of the Ships of the Vice-Admiral of the Blue's Division to chase to Windward?

A. I do.

Q. Do you recollect at that Time how the Vice-Admiral of the Blue bore with respect to the *Victory*?

A. About a Point or a Point and a Half before the Lee-beam, and about Four Miles Distance.

Q. What Sail was the *Formidable* under at that Time?

A. To the best of my Recollection Foresail treble-reefed, Topsail, Mizensstay-sail, and Mizzen.

Q. What Sail had the *Victory* then set?

A. Courses treble-reefed, Topsails, Mizzen, and Mizensstay-sail, to the best of my Recollection.

Q. What Watch had you in the Evening of the Night of the 27th?

A. I had the first Watch in the Evening of the Day I am speaking of.

Q. What Sail was the *Victory* under during your Watch?

A. Foresail treble-reefed, Fore and Maintop-sails, that was the Sail during the greater Part of the Watch, till the Mizzenmast was secured, then the Mizenssheet was hauled aft. She scarcely steered before for want of after Sail. I judged that to be about Seven Bells.

Q. Were there any other Alterations of the Sails during your Watch?

A. None.

Q. Did your Top and other distinguishing Lights burn well?

A. They did; the Lanthorns being frequently wiped and cleaned for the Purpose.

Q. Did you see any Rockets thrown from the *French* Fleet into the Air?

A. I did, Two.

Q. At what Time was that?

A. Nearly Eleven, rather before than after.

Q. Did you not see several Lights to Leeward after that; I mean dispersed Lights?

A. I did; and I saw some Flashes, which I took for Squibs.

Withdrew.

Lieutenant Robert Calder, late Sixth Lieutenant of the Victory, sworn.

Prisoner asked,

Q. Do you recollect the *Fox* being sent with a Message to the Vice-Admiral of the Blue, in the Afternoon of the 27th?

A. I do.

Q. Can you say at what Time of the Day it was?

A. From the Height of the Sun I should suppose it to be between Four and Five, I did not observe by Watch, I had it not about me.

Q. Were not the People at your Quarters all in good Order, obedient, and alert?

A. They were so.

Withdrew.

Honourable

Honourable Captain George Berkeley,
late Fifth Lieutenant of the Victory,
sworn.

Prisoner asked,

Q. Do you remember at what Time of the Day the *Fox* was sent with a Message to the *Formidable* on the 27th July?

A. I came upon Deck and asked the Quarter-master what o'Clock it was; he answered, it was after One Bell, or almost Five o'Clock. I was then shewed the *Fox* standing to Windward towards the *Formidable*, with a Message, as I was told, from the Admiral.

Q. Was you told what that Message was?

A. Yes.

Q. What Watch had you the Night of the 27th?

A. The Middle.

Q. Did you see the Lights of the *French* Fleet during your Watch?

A. The Officer whom I relieved shewed me the *French* Lights, as he said, about Three Points abaft the Beam.—I kept my Eye upon them the whole Watch; when Day-light broke, I only perceived Two Ships where the Lights had appeared, and a third a good Way astern of them.

Q. What Sail was the *Victory* under during your Watch?

A. Treble-reefed Fore and Maintop-sail, Fore-sail and Mizzen, I believe the Mizzen-staysail, but am not sure of it. Her Mizentop-sail was taken in, in order to shew the Lights in the Maintop. She carried her Helm alee almost the whole Watch.

Q. Were the distinguishing Lights burning clear and well?

A. They were particularly so, more so than any Night before; there were more Lights added than there had been any Night before. I particularly went ast to see that the Stern Lights were kept in proper Order.

Q. Where was you quartered?

A. Upon the Middle-deck forward.

Q. Were your People in good Order, obedient, and alert in every Shape and every Matter they were employed upon?

A. They were particularly so, more than I ever saw People in any Ship I have before sailed in.

Withdrew.

Sir Jacob Wheate, late Fourth Lieutenant of the Victory, sworn.

Prisoner asked,

Q. Do you recollect my sending the *Fox* to the Vice-Admiral of the Blue in the Afternoon of the 27th, and at what Time it was?

A. I perfectly recollect standing by the Admiral on the Starboard Side of the Quarter-deck, when he ordered a Frigate to be sent to Sir Hugh Palliser, to tell him, that he only waited for him and his Division coming down to renew the Action.

Q. Do you recollect the Hour when the Frigate was sent?

A. I cannot speak to Ten Minutes or a Quarter of an Hour, but am positive it was about Five o'Clock.

Q. Where was you quartered?

A. Upon the Forepart of the Main-deck.

Q. Were not the People under your Command orderly, alert, and temperate—and did not they give you great Satisfaction?

A. Perfectly so.

Withdrew.

Sir John Lindsay, K. B. Captain of the Prince George, sworn.

Prisoner asked,

Q. From my first seeing the *French* Fleet to the Morning they were brought to Action, did they shew any Intention of coming to Action, or did they always avoid it?

A. On the Close of the Evening of the 23d, they got about Twelve Ships formed; they then stood towards the *British* Fleet, passed to Leeward, and next Morning we saw them to Windward; they then were forming their Line of Battle. The Admiral made the Signal for a general Chace. If they had any Intention of giving Battle, they would not have suffered our separating Two of their capital Ships from them; and for the whole of the Time afterwards they carried a Prefs Sail, endeavouring to avoid us till the Afternoon of the 27th.

Q. Did I do my utmost, as an Officer, to bring them to Action during those Days?

A. The Admiral carried as much Sail, as the keeping the Fleet in a connected Body would admit of; and if he had continued in a Line of Battle, they would in a very short Time have got out of Sight of us, from their Superiority in sailing.

Q. Had you commanded a *British* Fleet in the Situation the *French* were with respect to the *English* on the 24th, 25th, and 26th of July, would you have hesitated a Moment to have led it down to Battle, on account of the Wind and Weather during any Part of those Days?

A. I think an Officer who hesitated a Moment would have been unworthy any Command in the *British* Fleet.

Q. Do you remember a Signal being made, early in the Morning of the 27th of July, for several Ships of the Vice-Admiral of the Blue's Division to chace to Windward?

A. At this Distance of Time, I cannot recollect exactly whether I saw the Signal or not—but I remember such Signal having been made.

Q. Was there at this Time any greater Indication of the *French* Fleet designing to come to Action, than on the preceding Days?

A. There was not.

Q. Do you recollect the Position of the Vice-Admiral of the Blue, and his Division at that Time when the Signal was made?

A. I cannot say the exact Position of the Vice-Admiral of the Blue's Division just at that Time—but early in the Morning they were a considerable Distance to Leeward.

Q. What, in your Judgment, was the Object of that Signal—and did you think it a proper one, under the Circumstances in which it was made?

A. It appeared to me to be with an Intention to bring up the Leeward Ships to close with the Center Division; and if it had not been made, I apprehend a great Part of that Division would not have come into Action at all.

Q. What, in your Opinion, would have been the Consequences, if I had formed the Line of Battle early in the Morning, instead of bringing up the Leewardmost Ships by Signal to chace?

A. As the *French* Fleet were constantly avoiding us, it might have enabled them to have escaped entirely; and I am fully satisfied, we should not have exchanged a Shot with them that Day.

Q. Did you see the *French* Fleet getting upon the Larboard Tack just before the Action began?

A. There was a thick Squall, which intercepted them from our Sight for some Time. A short Time before the Action began it cleared up, and

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I then

I then saw them in the Manœuvre of changing from one Tack to the other.

Q. Was not our getting within Reach of the Enemy very sudden and unexpected, from the Shift of Wind?

A. The Wind changed Two Points after we got upon the Starboard Tack, which enabled us to lie up for them, as it appeared to me they had tacked their whole Fleet together. Their Rear Ships were obliged to bear down to get into the Wake of their Van, that they might form their Line of Battle. It was so unexpected, that I had but just got my Long boat cut away from the Side before the Enemy began to fire upon me.

Q. What would have been the Consequence, if I had formed my Line of Battle at this Time?

A. It would have thrown the Fleet into such Confusion, that if the Enemy had bore down to the Attack, it might have been attended with very fatal Consequences.

Q. As I am charged with having advanced to the Enemy, and made the Signal for Battle, without having formed a Line, I desire you will inform the Court, if you think I was justifiable in doing so, under the Circumstances you have stated?

A. There was no Alternative. You must either advance and attack the Enemy without forming a Line of Battle, or not attack at all. To me it was a very animating Sight; it appeared bold, daring, and becoming the Character of a *British* Seaman, who felt his Superiority over an Enemy he was accustomed to beat; and the Success justified the Measure—for it threw the Enemy into such Confusion, that I found Two *French* Admirals close together, which could not have been their Stations in the Line of Battle, and I fired upon Three Ships abreast of each other.

Q. Did I make the Signal for the Line of Battle as soon as I had wore, after passing the Rear of the *French*?

A. As soon as the *Victory* got upon the Larboard Tack, the Signal for the Line of Battle was hoisted.

Q. Was that the properest Signal I could make for collecting the Fleet together?

A. I know of no Signal so proper, or which every Officer piques himself on paying so prompt an Obedience to.

Q. I am charged with having stood to a great Distance beyond the Enemy, before I wore and stood towards them—I desire of you, who must be able to know it, as being, I believe, the first Ship that wore after me, whether the Fact be true?

A. The Admiral wore before any other Ship was ready to follow him; my Rigging was so much cut, that I was obliged to pass and wear under his Stern; it appeared to me to be done with great Expedition.

Q. I am charged with having shortened Sail, instead of advancing to the Enemy—I desire to know, whether I had a sufficient Force collected to have admitted of my advancing faster than I did?

A. I do not remember above Three or Four Ships that were close to the *Victory*. The Vice-Admiral of the Red was advancing—but it does not appear to me, it was with an adequate Force to attack the Enemy.

Q. Had I, at any Time while I stood on the Larboard Tack, a sufficient Force collected to renew the Fight?

A. There was not.

Q. Did you see the *French* Fleet wear, and begin to form their Line on the Starboard Tack?

A. I did.

Q. Had I a sufficient Force collected at this Time to prevent their forming?

A. If the Red Division had advanced with the Ships nigh the Admiral, they must have suffered a great deal before the others could have come up to their Relief; it would therefore have been highly improper to have attempted it.

Q. I am charged with having wore at this Time, and made Sail directly from the Enemy—I desire you will explain this Manœuvre to the Court.

A. The *French*, when first they drew out their Line, stood for the Center Division; but the Vice-Admiral of the Red placing himself between the Admiral and the Enemy, obliged them to relinquish their Intention of attacking the Fleet. They then bore away, and pointed for some of our disabled Ships that were to Leeward. A short Time after, the Admiral made a Signal for wearing, and bore down under an easy Sail to support those Ships.

Q. Did I make every necessary Signal to form the Line, and collect the Fleet on the Starboard Tack?

A. Every Signal, I think, that could be made on the Occasion.

Q. What Sail did I carry?

A. Topails—the Forefail I am not certain of; I know the *Prince George* was only under her Topails.

Q. Was not the Sail I carried necessary for the Protection of the disabled Ships—and could the Sail I carried possibly prevent the Vice-Admiral of the Blue from coming into the Line?

A. If the *Victory* had carried less Sail, it would have been difficult for the other Ships to have kept under Command, and preserved their Stations in the Line of Battle; and it does not appear to me, that it could prevent any Ship from getting into her Station.

Court asked,

Q. You have said before, that the *Prince George* had only her Topails—were they reefed?

A. Yes—double-reefed, and the Foretopfail not hoisted.

Prisoner asked,

Q. Did not the easy Sail I carried permit the *French* Fleet to range up with me under their Topails?

A. It did.

Q. Had this Manœuvre, as you have stated it, the least Appearance of a Flight?

A. Not the least.

Q. Could not the *French* Fleet have attacked the *British* Fleet at any Time they thought proper?

A. It was in their Power to do so all the Afternoon.

Q. Did you see the Vice-Admiral of the Red leave the Rear to form ahead?

A. I did.

Q. At what Distance was the Vice-Admiral of the Blue and his Division at this Time, and how did he bear from you?

A. At that Time I was not in my Station, having placed myself ahead of the *Victory*, expecting an inverted Line would have been formed. Upon the Vice-Admiral of the Red's going ahead, my Signal, also the *Bienfaisant's*, were made to resume our proper Stations. After I had got astern of the Admiral, I observed the Vice-Admiral of the Blue and his Division about Two Miles to Windward, a Point abaft our Weather-beam.

Q. What Course must the Vice-Admiral of the Blue have steered, to come into his Station?

A. I should suppose nearly before the Wind.

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Q. Did

Q. Did any Thing appear to you to prevent his bearing down?

A. He had then his Foretopfail unbent, but it appeared to me, he was capable of making more Sail.

Q. Did he ever make any visible Effort to come into the Line?

A. I saw none.

Q. How long did you observe his Foretopfail to be unbent?

A. It was unbent, I apprehend, about Half past Three or Four o'Clock, and continued so till after Sun-set.

Q. Did you ever see him repeat the Signal for the Line of Battle.

A. I never saw it on board the *Formidable*.

Q. Can you assign any Reason why the *French* Fleet were not re-attacked that Afternoon?

A. I suppose, if the Vice Admiral of the Blue had led down his Division into the Line of Battle, they would have been re-attacked.

Q. You think then I should have renewed the Battle that Afternoon, if the Vice-Admiral of the Blue had led his Division down?

A. I certainly do.

Q. You have heard read the Fifth Article, by which I am charged with not having pursued the *French* Fleet in the Morning of the 28th.—I beg you will inform the Court of all you know concerning that Matter?

A. The *Prince George's* Signal, the *Elizabeth's*, the *Bienfaisant's*, and *Duke's*, were made to chase the Three Ships that were in Sight.—The *Prince George* was so much shattered in her Masts that she was not able to make Sail, therefore the Signals were made to call them in, the whole of the Fleet appearing so much crippled, that the Chace could not have been continued with any Prospect of Success.

Q. The whole Fleet being so crippled after the Action of the 27th, was there any Probability of getting up with the *French* Fleet before they reached the Port of *Brest*, Wind and Weather as they then were?

A. There was not the least Probability of it, it might have been attended with great Danger to have carried the Fleet on a Lee-shore, in the State they then were.

Q. Your Station being very near me, which you preserved the whole Time I was in Pursuit of the Enemy, and during the Day of the Action, which afforded you an Opportunity of seeing Objects in nearly the same Point of View with myself; I desire you will state to the Court any Instance, if you saw or knew of any such, in which I negligently performed any Part of my Duty on the 27th and 28th of July?

A. I can state no such Instance, because the Admiral fulfilled his Duty in every Particular.—I had the Honour of serving under his Command last War, and had such strong Proof of his Bravery, Ability, and Knowledge in his Profession, as pointed him out to me as one of the greatest Sea Officers this Country has ever produced, and the whole of his Conduct during his late Command, has further convinced me that my former Opinion was just.

Prisoner has no further Questions to ask.

Prosecutor asked,

Q. Sir *John Lindsay* has mentioned the Time the Ships chased on the Morning of the 27th.—I should be glad to ask, that if those Ships had been permitted to stay with their Admiral, whether they would not have gone into Action with their Admiral as he did, and whether, if they had done so, they would not have supported

each other, have done the Service better, and been less damaged themselves?

A. Several of the Ships whose Signals were made, were to Leeward of the Vice-Admiral; therefore, if the Signal had not been made, they could not have had the Advantage of the Change of Wind, and therefore, I apprehend, they could not have come into Action at all.

Q. Can you name any one Ship that was to Leeward except the *Ocean*?

A. I cannot tell the Name of any Ship, but they were all astern of the Vice-Admiral when the Signal was made, consequently could not have had the Advantage of the Shift of Wind if the Signal had not been made.

Q. Do you think, at the Distance you were, you can judge better of the respective Situations of the Ships one from the other, than the Captains of the Divisions themselves?

A. I certainly cannot.

Q. Do you know that the *Ocean* was the Sternmost and Leewardmost Ship of the whole?

A. I cannot recollect at this Distance of Time.

Q. Do you know, whether the *Ocean* fetched into Action with the *French* Admiral?

A. I do not.

Q. If the Sternmost and Leewardmost of the Ships, which was not a chasing Ship, did fetch into Action with the *French* Admiral, could not the whole have done the same if they had not chased—as the *Formidable* likewise did?

A. If the Leewardmost Ships did fetch into Action in the Manner that is stated, I suppose they could.

Q. You have taken a good deal of Notice of the Motions of the *French* after the Action; do you recollect taking any Notice of the *Formidable* immediately after the Firing ceased?

A. I did not see the *Formidable* till she was passing to Leeward of the *Victory*.

Q. I understood, that you took Notice of the Ships that first began to draw out from the Body of the *French* Fleet; did not you observe those Ships first haul their Wind, and steer for Two of our Ships that were lying close astern of the Rear of the *French* Line?

A. I did not take Notice of those Two Ships.

Q. Do you know that the *Formidable* did wear close to the Rear of the *French* Line?

A. I do not.

Q. If the Admiral had wore himself within Gun shot of the Sternmost of the Enemy's Line, whether you in the *Prince George*, and as you believe, all the rest of the Ships, would not have done the same?

A. My Rigging was so much cut that I could not wear at the Time the Admiral did, and as the other Ships did not follow when he did, I suppose they were in the like Condition.

Q. Do you not suppose a Ship to be not capable of wearing, that has all her Masts standing and Sails set, though some of the running Rigging might be cut, in moderate Weather.

A. Without her Braces and Bowlines, I do not see how a Ship is to wear and get upon a Wind on the other Tack.

Court asked,

Q. If the Admiral could have wore, would it have been prudent so to do, when the Ships were following and still engaging?

A. I should think it would have been highly imprudent, as it must have thrown the Ships behind into Confusion, and run a Risk of getting on board of each other.

Prosecutor asked,

Q. If those Ships that remained behind continued

to

to stay in Action, upon his having done so would there have been any Risk?

A. There would have been no Risk if the Ships astern had wore before and got upon the same Tack with the Enemy, otherwise I think there would have been a great deal.

Q. In regard to the Risk, is not the Sea wide enough for Ten Ships meeting, to go clear of one another?

A. I have observed in all the Manœuvres of a Fleet, when they have their Sails entirely in good Order, that when they got into Confusion together, there is great Danger of falling on board, and it requires the utmost Attention of an Officer to prevent those Accidents happening; and it cannot be supposed that Ships after coming out of an Action can be worked with that Nicety as on other Occasions.

Court asked,

Q. If they had wore, would not every one of them have been raked by the Enemy in so doing?

A. They certainly would.

Prosecutor asked,

Q. If you had been coming down the French Line, and had seen the Rearmost of the Enemy re-attacked by the Ships that had passed before, would not you have run the Risk of that short Time wearing, in order to have got upon the same Tack to continue the Engagement?

A. I cannot well suppose the Case, I do not understand it.

Question repeated.

I do not suppose such a Case would exist, for no Officer would wear and attack a Ship ahead of me, while I was standing on the other Tack; but if I found a Ship in that Situation, I certainly would wear and re-attack at all Risques.

Q. If the Ship that received the most Damage in her Rigging and Sails, or at least as much as any other Ship, was able to wear immediately after she came out of Action, why might not the rest have done so?

A. That must depend greatly upon the Nature of the Damages she receives; if the Braces and Bowlines are intire, the Ship may be wore, but I do not see how a Ship is to get upon a Wind on the other Tack without them.

Q. If the Ship that had all her Braces except one or two cut, was able to run up single Ropes, or by making Use of other Expedients was enabled to do it in the Manner I have mentioned, might not other Ships have done it too?

A. I should suppose what one Man can do, another may.

Q. Were not the last Ships that came out of the Action, the Vice-Admiral of the Blue, and some of the Ships of his Division?

A. I think they were.

Q. Do you know that they suffered more than any other equal Number of Ships of the Fleet, both in the Number of the Men killed, and in their Rigging and Sails?

A. I can only speak to my own Observation, they did not appear to me to be more so than the other Ships of the Fleet, and I believe the *Prince George* suffered more, or as much, as any Ship of the Fleet.

Q. Whether upon any one of the *Prince George's* Masts, all her Shrouds on one Side were shot away except one, and one Topmast Shroud, the others all shot away, and the Stay and Springstay shot away?

A. They were not.

Q. If the latest Ships that came out of Action, and which had received the most Damages, could be expected to be in Condition to take their Sta-

tions in a close Line, so soon as the other Ships that had been longer out of Action and less engaged?

A. If they were more damaged they certainly could not?

Q. If they were equally, and came much later out of Action?

A. They could not.

Q. What do you suppose might be the Admiral's Reason for ordering the Vice-Admiral of the Red to take the Station of the Vice-Admiral of the Blue; was it because the Vice-Admiral of the Blue had just then come out of Action?

A. The Reason appeared to me that they had not suffered so much, and therefore he placed those Ships between him and the Enemy, as no Ships were there.

Q. I understand you, that the whole Fleet went beyond the Admiral, and kept him next the Enemy; was that the Case?

A. That was the Case a little before the Admiral wore upon the Starboard Tack.

Q. Whilst the Red Division were lying by Orders in the Station of the Vice-Admiral of the Blue's Division, could any of the Ships of that Division go into their Station, if they had been able to do so?

A. They could not.

Q. You have mentioned your noticing the *Formidable* lying to Windward with her Foretopfail unbent, and that she was a Point abaft the *Prince George's* Beam; did you set her by Compass?

A. I did not.

Q. Did you know her Condition at that Time, or the Reason why the Foretopfail was not set?

A. I knew no Reason for it.

Q. Upon the Question relating to chasing, you mentioned the whole Fleet's being crippled, do you know if the whole Fleet were crippled?

A. They appeared so to me, I only took a cursory View of the Fleet; but what I mean is, the greatest Part of them.

Q. You was asked if you did not think the Admiral meant to renew the Engagement that Afternoon; I should be glad to ask, if you thought that the Admiral intended to renew the Engagement so late as at Seven or Eight o'Clock in the Evening, at the Risk of a Night Engagement, and with the Ships that came last out of the Engagement so much damaged, in preference to those that had been the least damaged and the longest out of the Engagement?

A. I certainly thought the Admiral meant to renew the Engagement when I got astern into my Station in the Afternoon, but I can give no Opinion with respect to Seven or Eight o'Clock. I should rather imagine he would not.

Withdrew.

The Honourable Captain Windsor again called in.

Prisoner asked,

Q. When you received Orders from me to go to the *Formidable*, whether the *Fox* was not obliged to get upon the contrary Tack, and whether she could fetch the *Formidable*?

A. She was obliged to go upon the other Tack, and could not fetch the *Formidable*?

Q. Did she carry a great deal of Sail?

A. The Courses and Topgallantails and Main-topmast-staysail.

Q. You have, upon the former Part of your Evidence, mentioned the *Formidable's* having cheered the *Fox*, and the *Fox* having returned the Cheer,

I beg to know whether you recollect the *Formidable* returned you any Cheer after you had returned her Cheer?

A. To the best of my Recollection she did.

Prisoner has no further Questions to ask.

Court asked,

Q. When you was upon the Larboard Tack going towards the *Formidable*, did you keep a close Wind?

A. The *Fox* was close hauled upon a Wind.

Q. Do you know what Part of the *Formidable* the last Cheer returned you was given from?

A. As near as I can remember, from the Fore-castle.

Prosecutor asked,

Q. What Part of the *Formidable* was the first Cheer given from?

A. From the Main and Mizen Shrouds.

Withdrew.

Lieutenant Albemarle Bertie, First Lieutenant of his Majesty's late Ship the Fox, sworn.

Prisoner asked,

Q. Do you recollect the *Fox's* being called to the *Victory* in the Afternoon of the 27th July?

A. I do.

Q. Do you recollect the Message given to Captain Windsor from the *Victory* for the Vice-Admiral of the Blue?

A. I do.

Q. What was the Purport of it?

A. The Admiral ordered Captain Windsor to go to Sir Hugh Palliser to let him know it was his Orders, that he came down into the *Victory's* Wake with his Division, and that he waited for that to renew the Action.

Q. What Hour of the Day was this?

A. I did not minute the Time, but I think it was between Five and Six o'Clock.

Q. Do you know whether the Message was delivered to the Vice-Admiral of the Blue?

A. Captain Windsor delivered it twice punctually; not contented with that, he ordered me to take the Trumpet, which I did, and repeated it twice more. The Answer each Time was from the Stern-gallery, "Sir, I understand you perfectly."

Q. Was the Message you delivered to the exact Purport of the Directions I gave?

A. Word for Word, to the best of my Recollection.

Q. In standing from the *Victory* was you able to fetch the *Formidable*?

A. No; the *Formidable* was too far upon the Weather-quarter; we were obliged to tack.

Q. Had you much Sail set?

A. A Press of Sail; the Topgallantails were out, I remember we stood by the Halyards and Lee-sheets.

Q. How fast do you think you went?

A. I do not exactly recollect, but she had very fresh Way through the Water; I should suppose from Six to Eight Knots.

Q. How long might you be in going from the *Victory* to the *Formidable*?

A. I think about Half an Hour.

Court asked,

Q. Who do you apprehend it was that gave the Answer from the *Formidable's* Stern-gallery?

A. I fancy it was Sir Hugh Palliser; I am not certain.

Q. Did you observe any Manœuvres different

on board the *Formidable* after you had received that Answer?

A. She manned Ship to cheer us.

Q. Was there any Alteration in her Sails?

A. I do not recollect any.

Q. Was she under Sail, or lying to at that Time?

A. I think her Foresail was set; I know there were Hands in each Top, and on each Topfail-yard—I think she was bending her Topfail.

Q. You have mentioned the Hour between Five and Six—Do you mean that when the Message was received or delivered?

A. When it was received.

Withdrew.

Mr. George-William Courtney, late Midshipman of the Fox.

President asked,

Q. How old are you?

A. Sixteen.

Prisoner asked,

Q. Had not you the Charge of a Prize to bring her into Port taken by the *Fox*?

A. Yes.

He is then sworn.

Q. Was you on board the *Fox* when the *English* and *French* Fleets came to Action?

A. I was.

Q. Do you remember the *Fox's* being hailed by the *Victory* on the 27th in the Afternoon?

A. I do.

Q. Do you remember at what Time it was?

A. Between Five and Six o'Clock.

Q. Do you recollect what Orders were given, or Message sent by the *Fox* to the Vice-Admiral of the Blue?

A. You desired Captain Windsor to go and acquaint Sir Hugh Palliser that you only waited for him and his Division bearing down into your Wake to renew the Engagement.

Q. Was that the exact Message that was delivered by the *Fox* to Sir Hugh Palliser?

A. Yes.

Q. Do you know whether there was any Answer given to it?

A. There was, but I do not recollect the Words.

Withdrew.

The Prisoner requested that Part of the Publication in the Newspapers, which the Prosecutor has admitted to be his, might be read; but the Prosecutor objecting to the Introduction of a Newspaper, the Request was dropped.

The Honourable Frederick Maitland, Captain of the Elizabeth, sworn.

President,

I am directed by the Court to acquaint you, that as it is likely, upon your Examination, or Cross Examination, you may be asked your Opinion, you have a Right to give it, or refuse it, as you shall think proper.

Prisoner asked,

Q. What Day of the Month was it when the *French* Fleet were first seen?

A. We saw them on board the *Elizabeth*, on the 23d of July, between Eleven and Twelve o'Clock.

Q. Were they seen the next Day, and what was their Position, with regard to the *English* Fleet?

N n

A. I

A. I think the *Arethusa* made the Signal of seeing them about Six o'Clock, and we did not see them till about that Time—it was very hazy.

Q. Was it in their Power to have come down to the *English* Fleet, and have engaged them?

A. There is no Doubt of that, for they were right to Windward.

Q. Did I use every Means, as an Officer, to get up with, and bring them to Battle, from that Time to the 27th, when they were brought to Battle?

A. To the best of my Judgment you did.

Q. Do you remember that I made a Signal to form the Line of Battle, on the 24th in the Afternoon?

A. I do.

Q. Had I pursued the *French*, in that Order, would it have been possible to have preserved our Nearness to them?

A. No, we continued as near our Stations as we could for forming a Line.

Q. Did you judge from the Motions of the *French*, on the 24th, 25th, and 26th of July, that they were inclined to come to a Battle with the *English* Fleet, or to avoid it?

A. To avoid it, by all means;—they did every Thing in their Power to avoid it.

Q. If you had commanded a *British* Fleet of the Force of the *French*, and situated as the *French* were, with respect to the *English* Fleet of the like Force, should you have hesitated one Moment in bearing down upon them, and bringing them to Action, on account of the Weather, as you know it to have been?

A. No—nor I dare say no other Officer in the Fleet.

Q. What Part of the *French* Fleet did you begin Action with?

A. About the Fifth or Sixth Ship, I think, from the Van.

Q. How near was you to the Vice-Admiral of the Blue?

A. We began to fire at Twelve o'Clock, and at a Quarter past Twelve we backed our Mizentopfail, within Two or Three Cable-lengths of the *Formidable*.

Q. Were there any other Ships near you just at this Time?

A. There were Two Ships, or I think Three, astern of us.—The *Worcester*, I know, was astern of us, but the others I cannot say.

Q. Were they far astern of you?

A. Upon my Word I was so engaged, that I cannot pretend to say the exact Distance.—I looked forward to the Enemy.—Lord Longford passed us just before we began Action.

Q. Did you look upon it, that the Ships in the Rear were near enough to afford you Succour?

A. We found no Inconveniences from the Want of Succour. I do not choose to declare exactly as to the Nearness—I am certain they could not be very far astern.

Q. Did you pass the Rear of the *French* before or after the Vice-Admiral of the Blue?

A. At a Quarter past One, we were very close to the *Formidable*, and the Midshipmen upon the Poop called out, that there was a Ship coming aboard us on the Weather-bow, which obliged me to put the Helm aweather.—So soon as the shot across, I put my Helm down again, to bring the Ship to the Wind, and found, when the Smoke cleared away, I had shot up under the *Formidable's* Lee. The *Formidable* was then engaged with the Two last Ships in the *French* Fleet, whom I could not fire at without firing through the *For-*

midable, which obliged me to shoot on and pass the Rear of the *French* Fleet, before the Vice-Admiral.

Q. Did it appear to you, at this Time, when you passed the Rear of the Enemy, having been forced away by that Ship, or at any Time before, that the Vice-Admiral of the Blue was in Danger of being cut off by the Enemy?

A. No, I never thought any such Thing.

Q. Did you see Four or Five Ships to Leeward of the Body of the *English* Fleet, which the *French* Fleet made up to, in the Afternoon when the *English* had got upon the Starboard Tack, or before, seeming to be repairing their Damages?

A. I saw them very plain.

Q. While the *British* Fleet was on the Starboard Tack, in the Afternoon, with the Signal for the Line of Battle then flying, and the *French* forming on the same Tack, with the Sail the *Victory* was then under, had it the Appearance of a Flight?

A. No, very far from it—I had a different Opinion of it; and I will tell you my Reason—When the Admiral was standing to the N. W. and first made the Signal for the Line of Battle in the Afternoon at Two o'Clock, I was lying with my Head towards the Enemy, to Leeward of the Fleet, I wore and stood to the Southward, with an Intention to weather our Line, that I might get the easier into my Station; just as I was putting about, to go upon the same Tack the Admiral was, he made the Signal to wear, and wore; our Helm was then a Lee—I let the Ship come round upon the Heel, without hauling her Sails. I then said to my First Lieutenant, and the rest of the Officers, who were on the Quarter Deck, that though the Signal was out for the Line of Battle, as the Red Division was all astern, and the *French* seemed to endeavour to cut off our Four Ships to Leeward disabled, I thought it my Duty to stay where I was, and lead down to endeavour to cut off the *French* Van, which we did. About an Hour after we bore away, the *French* were within Random Shot of us, and they bore away Two or Three Points. We were at this Time pretty near our own Ships that were disabled, and Two of them made Sail, the *Courageux* and *Sandwich*—I saw the Red Division beginning to come forward to Windward of the Admiral—I then tacked, and went under the Lee of our Line, till I passed the *Vigilant*, and hauled through the Line.—I imagine this will satisfy the Court I did not think we were running away.

Q. Did you see the *French* Fleet go off in the Night?

A. No.

Q. What *French* Ships were seen in the Morning of the 28th?

A. There were Three in the Morning early.

Q. Was your Signal made to chase them?

A. Yes.

Q. Do you remember hailing the *Victory*, after the Signal was made, and telling me the crippled State of the *Elizabeth's* Foretopmast?

A. I told you both my Main and Foretopmast were crippled. We had a very large Shot that took away half the Diameter of the Fore Part of the Maintopmast, and it was sprung from that Shot.

Q. If I had chased towards *Ushant*, with my Ships in the crippled Condition they were after the Action of the 27th, was there in your Opinion any Probability of our getting up with them before they reached the Port of *Brest*, the Wind and Weather as they then were?

A. No, I do not think there was, which is shewn from the former Part of the Chace we had.

Q. You

Q. You have heard all the Articles of the Charge read, therefore I desire you will state to the Court any Instances, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th and 28th of July?

A. I saw none: I think you did every Thing

that a gallant and experienced Officer could do upon the Occasion.

Withdrew.

Court adjourned, being Half past Three o'Clock, till To-morrow at Ten o'Clock.

TWENTY-FIFTH DAY.

THURSDAY, the 4th of FEBRUARY, 1779.

COURT met according to Adjournment.
Prisoner brought in, and Audience admitted.

Captain John Laforey, of the Ocean,
sworn.

President,

Same Declaration as to Questions upon Matters of Opinion as had been made to Captain Maitland.

Prisoner asked,

Q. When was the French Fleet first seen?

A. On the 24th of July by Log.

Q. Did the Admiral use every Means as an Officer to get up with and bring the French Fleet to Action, from the 24th to the 27th of July, when it was brought to Action?

A. I think he did.

Q. Did you judge from the Motions of the French Fleet on the 24th, 25th, and 26th of July, that they were inclined to come to Battle with the English Fleet, or to avoid it?

A. I was the whole Time inclined to think, from the Observations I made, they studiously avoided it.

Q. If you had commanded a British Fleet, situated as the French Fleet were with respect to the English Fleet, of like Force, should you have hesitated one Moment in going down upon and bringing them to Action, on account of the Wind and Weather as you know them to have been?

A. I should not have thought myself justifiable if I had omitted any one Period of that Time bearing down upon the French Fleet and engaging them.

Q. Did you see the French Fleet in the Morning of the 27th of July?

A. I did.

Q. Did they shew more Intention of bringing on the Battle that Morning than on the preceding Days?

A. They did not.

Q. Did you see, on the Morning of the 27th, a Signal from the Victory for several Ships of the Vice Admiral of the Blue's Division to chase to Windward?

A. I did.

Q. Was the Ocean upon the Weather or Lee-quarter of the Formidable when that Signal was made?

A. The Ocean was wide upon the Weather-quarter of the Formidable, and a great Way astern.

Q. Was it your Intention to have edged towards the Formidable, about the Time the Signal was made to chase; or should you not have done so if the Chasing Signal had not been thrown out?

A. I had kept my Ship about a Point away for Half an Hour, in order to get nearer to my Di-

vision, and to increase my Rate of Sailing thereby, and I hauled my Wind immediately upon the Signal's being made from the Victory, for Part of Vice Admiral of the Blue's Division to chase to the Windward.

Q. If the Signal had not been made, and you had bore down to the Formidable, could you have got so well into Action as you did, without the Wind's having luckily changed Two or Three Points to the Westward.

A. I should not even where I was have got into Action, but for the Wind's shifting to the Westward, for the Formidable weathered me out of Gunshot when she tacked upon the Starboard-Tack.

Q. Did not the Formidable and the other Ships of that Division, whose Signals had not been made to chase to Windward carry all their Sail to close with the Center, which made it needless to enforce the Order to them?

A. I observed the Formidable to make Sail soon after the Signal was made for particular Ships of her Division to chase to Windward; I do not know any Thing as to the rest, I did not take Notice of them.

Q. If I had formed my Line on the 27th in the Morning, do you think I could have brought the French Ships to Action that Day?

A. If the Line had been formed that Morning we could not have come to Action with the French that Day, unless they had bore down to us, which it did not appear to me they had any Disposition to do.

A. When you got into Action with the French Fleet, how was your Ship situated with respect to the Formidable?

A. I fetched up under the Vice-Admiral's Lee-bow, and I had just Room to engage between him and the Ship ahead of me.

Q. When did the Ocean come out of Action?

A. About Half an Hour past One.

Q. At what Distance was the Formidable from the Ocean when the Action ceased?

A. I believe between Two and Three Cables Lengths.

Q. Did the Vice-Admiral of the Blue, at this or any other Time, appear to you in Danger of being cut off?

A. I think not; the French Fleet passed him upon a different Tack, none of them stopped to engage him, and, while I was near, none of them returned to engage him, consequently I do not think he was in Danger at that Time.

Q. At what Time did the Victory cross you upon the Larboard Tack standing towards the Enemy?

A. I believe about Half an Hour after I came out of Action?

Q. How many Ships were formed ahead or astern of the Victory on the Larboard Tack when you passed her on the Starboard Tack?

A. I

A. I am certain there were none ahead, nor do I recollect any near her astern, while I passed on the Starboard Tack.

Q. How soon after passing her was your Ship in a Condition to wear on the Larboard Tack?

A. I wore upon the Larboard Tack about Half an Hour past Two.

Q. Did you hail the *Worcester* after you came out of Action?

A. Yes, I did.

Q. Was you then to the Southward or to the Northward of the *Victory*?

A. I was then to the Southward of the *Victory*. I hailed the *Worcester* while I was wearing—she was in my Way—I called to her to get out of it—they gave for Answer I should be clear enough.

Q. How far might you then be from the *Victory*?

A. I do not well recollect how far I was then from the *Victory*, but I was from a Mile and a Half to Two Miles from the *Formidable*; I could not be so far from the *Victory*, because I met her upon the Starboard Tack, as I returned upon the Larboard Tack to take my Station.

Q. What Tack was the *Worcester* upon when you hailed her?

A. She was upon the Starboard Tack?

Q. Did you observe the Signal for the Line of Battle flying on board the *Victory* the whole Afternoon?

A. I saw the Signal for the Line of Battle flying on board the *Victory*; I do not recollect seeing it hauled down.

Q. How soon had you got the *Ocean* into Repair for renewing the Action?

A. The *Ocean* was ready to renew the Action when I wore on the Larboard Tack at Half past Two.

Q. Your Ship then was in a Condition to obey the Signal for the Line of Battle?

A. Yes.

Q. What then prevented your obeying it?

A. I did not think myself at Liberty to go down into the Line before the Vice-Admiral to whose Division I belonged; I waited in constant Expectation of his leading his Division down into the Line, until I bore away for that Purpose upon seeing my Signal thrown out on board the *Victory*.

Q. What Hour was it that the Signal was made on board the *Victory*, for your particular Ship to bear down?

The Witness has leave to look at his Minutes.

A. About Seven.

Q. How near was you to the Vice-Admiral of the Blue at that Time, and how was you situated with regard to the *Formidable*?

A. I was astern of the Vice-Admiral of the Blue, and upon his Lee-quarter; I cannot exactly ascertain the Distance, but I was not far from him.

Q. When you bore down in Obedience to the Signal that called you down, how far from the Wind did you lead to get into your Station?

A. I bore down into that Part of the Line which I thought would give room for the Rear of the Admiral's Division, and the Van of the Vice-Admiral's Division to lead between me and the Admiral. I do not recollect how many Points I went from the Wind, but I must have bore down pretty large, because, when I had placed myself in the Line, the Vice-Admiral was nearly upon my Weather-beam.

Q. Do you recollect what Sail the *Victory* was under in the Afternoon?

A. I do not.

Q. Do you recollect how many Knots the *Ocean* went upon a Wind.

A. The *Ocean* went that Evening until about Ten o'Clock, from Two Knots to Two Knots and a Half, and after that from Two to Three Knots. I was obliged to haul my Main-tack on board at about Ten o'Clock.—We had fallen down so much upon the *French* Line.

Court asked,

Q. What Sail had you set from Dark till Ten o'Clock?

A. The Three Topails and Foresail; the Foretopail upon the Cap. The Foretopmast being much wounded by a double-headed Shot, about Five Feet above the Cap. I do not recollect whether I had Stayails or not.

Q. How many reefs had you in your Topails?

A. I think they were close reefed, I know the Foretopail was, for I reefed it after coming out of the Action, on account of the Mast being wounded.

Prisoner asked,

Q. After the Admiral stood to the Southward upon the Starboard Tack, although the *French* Fleet were astern, had it to you the Appearance of a Flight?

A. Not in the least.

Q. Did the Vice-Admiral of the Blue, in the Afternoon, repeat any of the Signals that were made on board the *Victory*?

A. I saw the blue Flag at the Mizzen-peak, I do not recollect any other Signal, though I do not mean to infer from that, that the Signals might not be made; I do not really recollect that any other Signals were made.

Q. Do you recollect whether you saw the blue Flag at the Mizzen-peak, before or after your particular Signal was made to come down?

A. Before.

Q. Did the Vice Admiral of the Blue, when he made that Signal, shew any Appearance of bearing down himself?

A. I did not see any.

Q. Did you conceive his Repetition of that Signal meant that you should keep in his Wake, or bear down to the *Victory*?

A. I believe, I have answered that in a Reply to a former Question.

Q. Did you observe any Signal or Movements of the *Victory* on the Afternoon of the 27th of July, that conveyed to you an Idea, that the Admiral did not intend to renew the Action that Afternoon?

A. I did not.

Q. If the Vice-Admiral of the Blue had led down his Division at Five or Six o'Clock that Afternoon, was there not sufficient Day-light to renew the Attack, and did there appear to you any other Reason that could prevent it.

A. I think if the Line of Battle had been formed by Six o'Clock, there was Day-light enough to renew the Action, and I do not recollect any other Impediment to it.

Court asked,

Q. In the Situation the *British* and *French* Fleets were after the Action, and when the Enemy began to form their Line of Battle, could the *French* have brought the *English* to Battle again, if they had been disposed so to do?

A. I am convinced it was in the Power of the *French* Fleet to have attacked us, because, after I had placed my Ship in the Line, I sent for the Officers commanding the Guns upon the different Decks, to shew them Three of the *French* Line lying up for the *Ocean*, that they might be prepared to receive them when they came up.

Prisoner asked,

Q. Was the *French Fleet* seen on the Morning of the 28th from your Ship, or had they run off in the Night?

A. I saw but Three Sail in the Morning, one of them nearer to me than the other Two.

Q. What Force did you judge those Three Ships to be of?

A. The nearest to me I observed was a Line of Battle Ship; the other Two were carrying Sail at a Distance from me, that I could form no Judgment of them.

Q. If I had chased towards *Ushant* in the Morning of the 28th, in the State the Fleet was in their Masts, Yards, and Rigging, after the Action of the 27th, with the Wind and Weather as they then were, was there the smallest Probability of coming up with the *French Fleet* before they reached the Port of *Brest*?

A. Not the least Probability whatever.

Q. What were your Bearings and Distance from *Ushant* at Noon on the 28th?

A. *Ushant* bore E. N. E. half E. 23 Leagues, by the *Ocean's* Reckoning.

Court asked,

Q. Did you sound?

A. I do not recollect whether we sounded that Day, but I have the Soundings for the 23d at Noon, the Day we saw them. I imagine we might sound—but in the Extract from the Ship's Log-book, which I brought with me, they only give me the Soundings for the 24th. I have the Soundings for that Day, but not on any other.

Q. What were the Soundings then?

A. Eighty-four Fathom, coarse Sand and broken Shells.

Prisoner asked,

You have heard all the Articles of the Charge read, and therefore I desire you will state to the Court any Instance, if you saw or know of any such, wherein I negligently performed my Duty on the 27th and 28th of *July*?

A. I know of none: I was convinced at that Time, as far as my Judgment extended, that Admiral *Keppel* had left no Means uneffected to bring the *French* to Action, or to continue it afterwards—and I have remained in these Sentiments invariably to this Time.

Prisoner has no further Questions to ask.

Prosecutor asked,

Q. You have described the *Ocean* to have been upon the *Formidable's* Weather-quarter when the Signal was made for Ships to chase; you have also said, that after tacking you fetched up under the *Formidable's* Lee-bow; what do you mean by fetching up?—fetching up from whence?

A. I did describe the *Ocean* upon the Weather-quarter of the *Formidable* when the Signal was made for Part of the Ships of that Division to chase, I afterwards said that when the *Formidable* came into Action, the *Ocean* fetched under her Lee-bow; I said likewise, that upon tacking to the Starboard Tack, the Vice-Admiral had weathered me out of Gun-shot, consequently when I tacked to the Starboard Tack, I was upon the *Formidable's* Lee-quarter, the Shift of Wind enabled me to fetch up under her Lee-bow; my Station was upon her Quarter, I could not fetch it, but fetched under her Lee-bow, and came to Action as I have described.

Court asked,

Q. How wide was you upon the *Formidable's* Weather-quarter, and how far astern when the Signal was made from the *Victory* for those Ships of the Vice-Admiral of the Blue's Division to chase to Windward?

A. I cannot exactly ascertain at so great a Length of Time, the precise Distance and Bearings, but I imagine the Vice-Admiral of the Blue's Division might be about Three Points upon my Lee-bow, and I think I was full four Miles astern.

Prosecutor asked,

Q. Was you when at that Distance astern close to the *Victory*?

A. I was not close to the *Victory*, I was to Leeward of her Wake and astern of her.

Q. Where was your Station on the Larboard Tack?

A. Upon the Vice-Admiral's Larboard-quarter.

Q. In the Line, where?

A. Do you mean the Line ahead or abreast.

Q. In the Line ahead?

A. Ahead of the Vice-Admiral, and next to him.

Q. You have said, that you had once intended to edge down, in order to get into your Station, with respect to the Vice-Admiral of the Blue, which, in sailing, you say was upon the Weather-quarter, and in the Line, the next Ship ahead of him; if you had continued to do so, instead of remaining four Miles astern, and had got into either of those Stations, would you not have been in a properer Situation, respecting your own Admiral, for fetching up farther towards the Enemy's Van, after tacking, than by staying where you was?

A. Mr. President, I must beg the Vice-Admiral will state that Question in another Way, or else establish the Fact. He is pleased to infer, that I staid where I was, which I imagine implies, that I was not getting into my Station; I do not admit of the Fact; I said I hauled my Wind upon the Signal being made for the Ships to chase. Upon those Signals being made, I concluded the Intention of them was to bring the Vice-Admiral of the Blue's Division, which was too far to Leeward, into the Body of the Fleet. Upon which, I hauled my Wind, but at the same Time carried all the Sail the Situation of my Ship would admit of, to get into my Station. I had sprung my Maintopmast the *Sunday* Morning, which was the Occasion of my being thrown to Leeward. I had worked with all the Sail I could carry all Night, to fetch into my Station; and in the Morning I found myself where I have described. I do not admit that I was staying there at any Rate.

Q. You said you was upon the *Formidable's* Lee-bow when you came into Action; what Ship was next ahead of you?

A. The *Egmont*.

Q. Did you continue to follow the *Egmont* during the Action?

A. The Distance between the *Formidable* and *Egmont* was so short, that it was with Difficulty I could keep between them, without firing upon them; and I was once or twice very near on board the *Egmont*.

Q. Did you proceed on to keep to that Distance near to the *Egmont*, during the Continuance of the rest of the Action?

A. I think I have answered that in the preceding Answer; but I will answer it more fully. From the first to the last, I had Difficulty in Firing, to keep clear of the Vice-Admiral and the *Egmont*; but I was nearer to the *Egmont* the whole Time, than to the Vice-Admiral—From first to last about an Hour and an Half.

Q. Did you at any Time get up with the *Victory* during the Action, or do you remember the Circumstance of being very near the *Thunderer* when she fired into the *Egmont*?

A. The Action had begun before I got into it, and the Smoke was so thick, and almost so incessant,

fant, that I do not recollect seeing any Ship ahead, during the Time I was engaged, but the *Egmont*.

Q. Do you remember the Circumstance of the *Formidable*'s backing her Mizentopfail before the Action began, you being to Leeward, to let you shoot ahead, that you might fire clear of her?

A. I recollect, upon coming up, finding the *Formidable* with her Mizentopfail aback; but I do not know when she backed it.

Q. After you had got ahead of her, did you observe that she continued it aback, to let the Ships astern close with her?

A. I observed, after I had got ahead, that the *Formidable* did continue her Mizentopfail aback; but I did not ascribe it to the Motives that possibly the Vice-Admiral might have intended it for. The Smoke was so very thick astern, that I now and then saw only Two Ships astern of the Vice-Admiral of the Blue; but, indeed, I attributed his backing his Mizentopfail to an Act of Gallantry; to a Desire of giving the *French* as much of his Fire as he could, as they passed along. I mention this, because it was really my Idea at that Time, and I believe I mentioned it to my Officers.

Q. Must not the *Ocean* have been constantly increasing her Distance from the *Formidable*, if she did not also back her Mizentopfail?

A. The *Ocean*'s Mizentopfail was backed more than once during that Time, and her Topails were lowered down during the Action, on account of shooting too near the *Egmont*.

Court asked,

Q. You have said, that when you came out of the Action, you believed you was from two to three Cables-length Distance from the *Formidable*—Do you believe, that at any one Time of the Action you was at a greater Distance from her?

A. I was not in general so far, and in that Distance must be included what I was to Leeward, as well as what I was in a straight Line. I was not that Distance in a straight Line.

A Question was offered by the Prosecutor tending to new Matter, which the Court objecting to, from the Uncertainty it would occasion, when these Proceedings may finish; and being further considered as irregular, they retired. In a short Time they returned, and the Judge Advocate read the following Resolution:

“That the Prosecutor has no Right, upon Cross Examination, to enter upon new Matter, but must confine himself to such Points as have fallen from the Witness on his first Examination; and that therefore the Question proposed cannot be admitted.”

Q. What did the *Formidable* do immediately after she came out of Action?

A. I cannot tell; for from the Time I came out of Action, to the Time I wore to regain my Station, which was about an Hour, I was so occupied in the repairing what Damages we had received, that I did not attend to the *Formidable* at all.

Q. Then you cannot say, whether she wore and laid her Head again towards the Enemy?

A. No; I did not see her wear one Way or the other; I went on.

Q. Did the *Ocean* proceed on upon that Tack till she passed the *Victory* upon a contrary Tack?

A. I have already answered that Question, in Reply to the Admiral. The *Ocean* did proceed on upon the Starboard Tack, till she passed the *Victory* on the Larboard Tack.

Q. When did you see the Signal for the Line on board the *Victory*?

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A. When we passed each other upon the different Tacks.

Q. According to that Signal for the Line, upon that Tack, where would the *Ocean*'s Station properly have been?

A. Ahead of the *Formidable*, whose Station was ahead of the *Victory*.

Q. Were not the Ships of the Vice-Admiral of the Blue's Division the last that came out of the Engagement?

A. They were.

Q. Did they all proceed to pass the *Victory* whilst they were upon the Starboard Tack?

A. I do not know; the *Worcester* was the only Ship of that Division that I recollect having any Knowledge of after I came out of the Action.

Q. Though you do not know the *Formidable* wore and laid her Head towards the Enemy, do you know that she was the last Ship of the Division which got the Length of the Admiral at the Moment when the Signal for wearing was on board the Admiral?

A. I have already said I know nothing of the Motions of the *Formidable* from the Time I came out of Action, to the Time I joined her on the Starboard Tack.

Q. If, on passing the Rear of the Enemy, you had found the *Victory* on the other Tack, attacking, or advancing to attack the Enemy's Rear, could not you in the *Ocean* have wore and laid your Head the same Way, upon the same Tack also; or was the Condition of your Ship such you could not have done it?

A. I wore the *Ocean* as soon as I thought her in a Condition to wear, after reefing my Foretopfail, to save my Foretopmast, which I have before said was very dangerously wounded, with a double-headed Shot. I was something delayed in coming to the other Tack, by putting my Ship in a Condition to tack, instead of wearing, in order to recover my Station, being too far to Leeward before.

Court asked,

Q. There is a very great Distinction between putting a Ship in a Condition to wear, and her being in a Condition instantly to go into Action in a Line of Battle.—Was your Ship, at the Time you did wear, in a Condition to go along-side any Ship in a Line of Battle, and keep your Line?

A. I do not recollect any Impediment to the *Ocean*'s going into Action immediately after her wearing.

Prosecutor asked,

Q. When you came out of Action, was you so much disabled, as that if you had been immediately along-side of any Ship, that you might have engaged, with their Heads the same Way, you could not have maintained the Action, or that you must have been obliged to quit the Enemy?

A. I do not think the *Ocean* received so much Damage in the Time we were engaged, as two Frigates would in Half an Hour, had they been along-side each other; and I can scarce say we were well warmed with what we had. I speak with regard to the Damages sustained in her Hull and among the People; I do not speak of the Damages to the Running rigging or Sails.

Q. Could you have immediately re-engaged, if you had an Opportunity of getting along-side a Ship?

A. Yes, independent of manœuvring the Ship in regard to the Sails and Rigging.

Court asked,

Q. Then we are to understand, that your Sails and Rigging were in such a Condition, you could not

not

not have renewed the Action immediately.—You could have fought your Ship, but not have chaced?

A. I could not have wore, but in every other respect I could have engaged immediately.

A Member of the Court asked,

Q. Your Opinion has been frequently asked, as a very able and gallant Officer.—If I had had the Honour to have been entrusted with the Command of a Squadron, and you with a Pendant under me, and we had come to Action, and you discovered in me any Omission, which all are liable to in the Heat of Action, should you not have thought it your Duty, for the Honour of the Colours (setting my Honour out of the Question) to have informed me what your Opinion was, and how I could have remedied it, either by yourself or Officer?

A. Most certainly, if my Information could have tended to have remedied any Omission or Mistake.

Prosecutor asked,

Q. Is not that equally proper for the Senior Officer to observe to the Inferior, when he sees any Error on his Part, as for an Inferior to go to the Superior with those Observations respecting him?

A. I think the Obligation is reciprocal.

Q. You have mentioned, that in the Evening, when you went down to your Station in the Line, you observed Three of the Enemy's Ships laying up for the Ocean; were those Three the leading Ships of the Enemy's Line that were then forming?

A. I think they were not, to the best of my Recollection; for I think the Line was rather formed when I went down to my Station.

Q. At what Time was it you made the Observation of the Three of the Enemy's Ships laying up for the Ocean?

A. It was between Seven and Eight o'Clock; I cannot exactly tell, at this Distance of Time.

Q. Were our Fleet upon a Wind then?

A. I think they were, or nearly so.

Q. In the Situation of those Ships looking up for the Ocean, does not that mark them to be very much astern, and near your Wake?

A. No; they might look up to my Wake without being very much astern.

Q. I mean were they far to Leeward?

A. No, they could not be very far to Leeward; but really the Distance of Time is so great, and I have been so little prepared for these Kind of Questions, that I do not recollect how our Fleet was going at that Time; whether by the Wind, or one or two Points from it; for that makes a wide Difference with regard to this Question.

Q. You have said you were doubtful whether those Three Ships were the leading Ships of the Enemy's Line; can you recollect whereabouts the leading Ships were, with respect to their Bearing from the Ocean at that Time?

A. I do not recollect. They passed me very fast, playing with us, as it were; some with their Mizentopails aback, and some at Times shivering their Maintopails.

Q. The Time you are speaking of is, if I can recollect right, between Seven and Eight, after you got down?

A. It was after I was in the Line, while the Enemy was forming theirs.

Q. How near was the nearest French Ships, when first discovered in the Morning of the 28th, from the Ocean?

A. About three Miles from the Ocean, abast our Lee-beam.

Q. Was the *Formidable* ahead or astern of the Ocean, between the Admiral and the Ocean, or how otherwise?

A. The *Formidable* was then ahead of the Ocean, bearing down athwart her.

Withdrew.

Captain James Bradby, of the *Pluto* Fireship, sworn.

Prisoner asked,

Q. Was you Captain of a Fireship on the 27th and 28th of July?

A. Yes.

Q. And you saw the French and English Fleets engaged?

A. Yes.

Q. Did you pass to Leeward out of Gunshot?

A. Yes.

Q. Do you recollect at what Time you passed the Rear of the French Fleet in the Fireship you commanded on the 27th of July?

A. About twenty Minutes past One.

Q. Did you observe the Vice-Admiral of the Blue at that Time?

A. Yes.

Q. Where was he in respect to Bearings from you?

A. I was a little before his Lee-beam.

Q. At what Distance?

A. Just without the Range of Shot.

Q. Had you at any Time observed the Vice-Admiral of the Blue to be in Danger of being cut off by the French?

A. I did not.

Q. At the Time you passed the Rear of the French at twenty Minutes past One, had the Vice-Admiral of the Blue ceased firing with the French?

A. No.

Q. How soon afterwards had he?

A. He was engaging the last Ship.

Q. At this Time did you observe which Way the *Victory* was standing?

A. On the Larboard Tack.

Q. Did you observe whether she had the Signal out for Battle, or was it hauled down?

A. I did not observe the Signal for Battle on board the *Victory*; I saw it on board the *Queen*.

Q. At the Time the Vice-Admiral of the Blue came out of Action, what Ships of his Division did you observe ahead or astern of him, and how near were they to him?

A. The *Worcester* immediately astern; Two Ships ahead; but I do not recollect what Ships they were. The *Worcester* appeared to be close.

Q. When you observed the *Victory* first upon the Larboard Tack, how far do you think she was from you?

A. About a Mile.

Prisoner had no more Questions to ask.

Nor had the Court or Prosecutor.

Withdrew.

Captain Richard Edwards, of the *Sandwich*, sworn.

(Same Declaration made as to Questions upon Matters of Opinion.)

Prisoner asked,

Q. What Day was the French Fleet first discovered?

A. The 23d by the Day, and the 24th by the Log-book.

Q. Did you see the French Fleet the Day following?

A. I

A. I did.

Q. Were they to Windward or to Leeward of the *British* Fleet?

A. To Windward.

Q. Had they it in their Power to engage the *English* Fleet that Day, if they had thought proper?

A. Most certainly.

Q. Did I form my Line the first Day I saw them, and make the Signal the 2d Day for the same Purpose?

A. I beg Leave to refer to my Minutes, taken at the Time. The first Day I observed, at Half past Four, the Signal made by the Admiral for the Line of Battle. At Half past Six on the second Day, P. M. I observed the same.

Q. If I had pursued the *French* Fleet in the Order of Battle, would it have been possible to have preserved our Nearness to them?

A. By no means.

Q. Did I use every Means as an Officer to get up with, and bring the *French* to Battle, from the 24th to the Time we came into Action?

A. Yes.

Q. Did you judge from the Motions of the *French* Fleet on the 24th, 25th, and 26th of July, that they inclined to come to Action with the *British* Fleet, or to avoid it?

A. To avoid it.

Q. If you had commanded a *British* Fleet of the Force of the *French* Fleet, and situated as they were with respect to the *English* Fleet of the like Force, should you have hesitated one Moment in going down upon them, and bringing them to Action, on account of the Weather, as you know it to have been?

A. No, by no means.

Q. Could not the *French* Fleet have brought the *English* Fleet to Action any of those Days?

A. Most certainly, having the Advantage of Wind.

Q. Did the *French* shew any more Disposition to bring on Action in the Morning of the 27th, than on the preceding Days?

A. No.

Q. What would have been the Consequence if I had formed the Fleet into a Line of Battle on the Morning of the 27th, instead of closing with the *French*, as I did?

A. No Engagement.

Q. What Part of the *French* Fleet did you begin to engage with?

A. The second ahead of the Admiral fired upon me: I ordered them not to fire till the *French* Admiral passed you and the *Prince George*; but the Men, from their Impetuosity, contrary to my Orders, began with the first Ship ahead of the *French* Admiral.

Q. Was you well connected with the *Victory* and the Center Division, to which you belonged?

A. The *Prince George* was upon the Quarter of the *Victory*, and I as near as I could be (with the Force of the Sail) upon the Weather-quarter of the *Prince George*.

Q. Was the *French* Fleet in a regular well-connected Line of Battle?

A. No.

Q. Did you observe one of the *French* Ships with her Mainyard carried away by the *Prince George* or the *Sandwich* whilst you was in Action?

A. I did observe one of the *French* Ships with her Mainyard carried away; it was noticed by myself, the Master, and several others. Lieutenant *Buchanan*, who commanded the Lower-gun Deck, having Occasion to attend me upon the Quarter-deck soon after, told me he flattered him-

self he had pointed the Gun that shot it down.—I likewise saw another *French* Ship with her Mizzen-yard half down, and another Ship with her Top-sail-sheet cut.

Q. Did you see the Signal to wear soon after coming out of Action?

A. I did not; because I was to the Southward of the Admiral when he made the Signal; but I observed the Admiral to wear.

Q. Was the *Sandwich* in a Condition to wear after the Admiral had wore, and got upon the Larboard Tack?

A. She was not.

Q. Did you observe the *Victory* wear back to the Starboard Tack?

A. I did.

Q. What was your Situation when the *Victory* did wear with her Head to the Southward?

A. Our Situation was, we were stopping our Leaks when the Admiral made the Signal and wore. I ordered the Ship to be wore; the Carpenter told me, that he found the Damages the Ship had received by Shot under Water to be such, that he could by no means repair them if we wore, and laid our Head the other Way. He said they were material, and that the Ship made much Water. I ordered the utmost Dispatch to be used. We were in the Situation of repairing those Defects, and securing our Rigging and bending our Main and Mizzen Topsails, at the Time the Admiral wore.

Q. Did you observe any other Ships about you disabled at that Time?

A. Yes.

Q. Recollect who they were.

A. The *Courageux*, *Egmont*, *Robuste*, and the *Ramillies*.

Q. After the *Victory* had got upon the Starboard Tack again, did you observe her point towards you and the other disabled Ships?

A. She did from the Wind.

Q. Did that Course occasion her to near the Enemy, or increase her Distance from them?

A. Certainly to near the Enemy; because at Four o'Clock, when the Carpenter reported to me he had stopped the Leaks and repaired the Defects, I ordered the Master then to put the Ship about: She missed Stays, and I immediately ordered the Mizzen to be hauled up, and the Ship to be wore; and we wore within Random-shot of the Van of the *French* Fleet, hauled our Wind, and joined the Admiral.

Q. Did you observe the *Victory* at this Time with any Signals flying?

A. At Four o'Clock I observed the Signal for the Fleet to bear down into the Admiral's Wake. At Three Quarters past Four I observed the Signal for the Line of Battle ahead, a Cable's Length asunder—At Half past Five, for Three particular Ships being out of their Station—Three Quarters past Six, the Signal for several of the Vice-Admiral of the Blue's Division to make more Sail.—These Signals were taken by the Time of my Watch.

Q. Did you observe, in passing the *Victory*, what Sail she had set in the Afternoon of the 27th?

A. I endeavoured to head the *Victory*, to get into my Station.—Disputing a little with my Master when we drew near, I told him to get to Windward, which he was desirous of as well as myself; but we were so near, I was afraid we must have been aboard one another. I told him, it was my Duty to pass to Leeward of the Admiral; and I passed him so close, as to receive Orders from Admiral *Campbell* personally to wear immediately;

immediately; and the *Victory* then seemed to me to have Forefail and reefed Topfails.

Q. Did the Signals and Motions of the *Victory* convey to you an Idea that the Admiral did not intend to renew the Action in the Afternoon of the 27th of July?

A. By no means;—No.

Q. Had these Manœuvres of the Admiral, as you have stated them, the least Appearance of a Flight from the Enemy?

A. No; I have answered, that he was bearing down to them when I passed him.

Q. Did you see any Part of the *French Fleet* on the Morning of the 28th?

A. I saw Three Sail.

Q. Did you make any Observations what Size they were?

A. One was nearer than the other two, which I took to be a capital Ship: The others appeared to me to be Frigates.

Q. How far do you think they were from the *Sandwich*?

A. Four or five Miles.

Q. Was the *Sandwich* in a Condition to chase, if the general Signal had been made for that Purpose?

A. Not to chase.

Q. Did you observe any particular Ship's Signal made to chase on board the *Victory* on the Morning of the 28th?

A. I did not; for as the *French Ships* had run away, I had done with my Minutes.

Q. Then did you see any Reason to believe we should have come up with them, if we had chased, before they reached the Port of *Brest*?

A. No.

Q. You have heard all the Articles of the Charge read; I therefore desire you will state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I cannot state any, for I saw none.

*Prisoner had no further Questions to ask; nor had the Court or Prosecutor.
Withdrew.*

The Honourable Robert Boyle Walsingham, Captain of the Thunderer, sworn.

(The same Declaration made as to Questions upon Matters of Opinion.)

Prisoner asked,

Q. From the 24th of July, after seeing the *French Fleet*, to the Moment they were brought to Action, did they shew any Intention of coming to Battle, or did they always avoid it?

A. They never shewed any Intention; they always avoided it.

Q. Did I do my utmost to bring them to Action, from the 24th to the Day the Fleets got into Battle?

A. It was impossible you could do more.

Q. Had you commanded a *British Fleet*, in the Situation the *French Fleet* were with respect to the *English*, during the 24th, 25th, and 26th;—would you have hesitated a Moment to have led it down to Battle, on account of Wind or Weather, during any Part of those Days?

A. Not a Moment.

Q. What, in your Opinion, would have been the Consequence, if I had formed a Line of Battle early in the Morning of the 27th, instead of pursuing the *French* in the Manner I did?

A. You never could have brought them to Action.

Q. What Part of the *French Fleet* did you begin Action with?

A. I believe, to the best of my Recollection, about Eleven or Twelve Sail from the Rear.

Q. Did it appear to you to have been the Object of the *French Fleet* to have gone off to Windward, instead of coming to Action, if they could have passed the *English Fleet* far enough to Windward?

A. I have not the least Doubt of it.

Q. I am charged with having advanced to the Enemy, and made the Signal for Battle, without having formed a Line; I desire you will acquaint the Court if you think I was justifiable in the Manner in which I attacked the *French Fleet*?

A. You certainly was; you had no other Chance of bringing them to Action.

Q. I am charged with having stood to a great Distance beyond the Enemy, before I wore to stand towards them again; I desire to know if you, who must be able to know it, as being near me when I wore, whether the Fact be true?

A. I thought you wore very soon—I had some Difficulty in following you.

Q. Did I make the Signal for the Line of Battle as soon as I had wore?

A. You did.

Q. Was that the properest Signal I could make to collect the Fleet together?

A. Without all Manner of Doubt.

Q. I am charged with having shortened Sail, instead of advancing towards the Enemy; I desire to know, whether I had a sufficient Force collected to admit of my advancing faster than I did?

A. Undoubtedly not.

Q. Had I at any Time, whilst I stood on the Larboard Tack, a sufficient Force collected to renew the Fight?

A. No.

Q. Did you see the *French Fleet* wear, and begin to form their Line on the Starboard Tack?

A. I did.

Q. Did I make every necessary Signal to form the Line, and collect the Fleet on the Starboard Tack?

A. Every Signal you could possibly make, in my Opinion.

Q. What Sail did I carry?

A. Reefed Topfails and Forefails were all I saw.

Q. Did you observe any Ships disabled to Leeward?

A. I did.

Q. Did you observe me lead down from the Wind to their Protection?

A. I did; and I observed to my Officers on that Occasion, that I thought you bore down very much unsupported.

Q. Was not the Sail I carried necessary for the Protection of the disabled Ships; and could the Degree of Sail I did carry possibly have prevented the Vice-Admiral of the Blue from coming into the Line?

A. As far as it appeared to me, it could not prevent his coming into the Line.

Q. Did not the Sail I carried, during the Afternoon, permit the *French* to range up with me under their Topfails?

A. It did, and very often their Mizentopfails aback.

Q. What Sail had you set in the *Thunderer* to keep in your Station?

A. I had my Topfails in general, sometimes my Mizentopfails, aback, one Reef in my Topfails.

P p

Q. Was

Q. Was not what you had for a Maintopfail a Mizentopfail?

A. It was.

Q. Had this Sail which you have described, although the *French* Fleet were astern, and on the Lee-quarter of the *Victory*, the least Appearance of a Flight?

A. Of a Flight! No, Sir. I hear the Question with Indignation, and I reprobate the Idea.

Q. Did you see the Vice-Admiral of the Red leave the Rear to form ahead?

A. I did.

Q. Was there not Day-light at that Time sufficient to have attacked the *French* Fleet; and do you not believe I should have done it, if the Vice-Admiral of the Blue had immediately bore away, and taken his Station in the Rear of the Fleet.—The Period I mean is when the Red Division quitted the Rear.

A. There certainly was Time enough; and as a strong Proof that I supposed it was your Intention to renew the Action, that Night my Hands were never from their Quarters.

Q. Can you assign any Reason why I did not attack the *French* Fleet whilst there was Day-light for me to have done it?

A. There was but one suggested to me, and that was, that you were not supported by the Vice-Admiral of the Blue.

Q. Did the Vice-Admiral of the Blue ever make any visible Effort to come into the Line?

A. Not that I saw.

Q. How long did you observe the *Formidable's* Foretopfail unbent?

A. To the best of my Recollection, for four or five Hours.

Q. Did you observe any other Defect in that Ship?

A. None.

Q. Did you see any Signal from that Ship, that she was in Distress, as the 22d Article of the Fighting Instructions directs?

A. No.

Q. Did you observe any Ships to be called by the Vice-Admiral of the Blue, for the Purpose of changing his Flag, by which I should have known his Distress, as the 25th Article allows him to do?

A. No.

Q. Did you ever see the Vice-Admiral of the Blue repeat the Signal for the Line of Battle during the Afternoon?

A. No.

Q. What Sail did you carry during the Night of the 27th, to keep in your Station?

A. My Topsails, my Maintopmast-staysail, and sometimes, when I shot ahead, my Mizentopfail aback.

Q. Did you see the *French* Fleet in the Morning of the 28th?

A. No.

Q. Did you see any *French* Ships?

A. I saw Three Sail to Leeward, and I saw your Signal thrown out to chase them.

Q. If I had made a general Signal to chase to Leeward that Day, in the State the Fleet was after the Action of the 27th, and the Wind and Weather as they then were, was there the smallest Probability of coming up with the *French* Fleet before they reached the Port of *Brest*?

A. I should think not, because the *French* Ships in general were not much disabled in their Masts and Rigging; and the Three Ships we saw the next Morning set their Topgallant-studding-sails.

Q. You have heard all the Articles of the Charge read; therefore I desire you will state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I know of none; I have always been taught to look up to you as an Officer of Ability, Courage, and good Conduct; I never had the Honour of serving under your Command before, but prepossessed as I was in your Favour, your Conduct exceeded my most sanguine Expectations.

Q. Notice has been taken in the Course of this Trial, of the *Thunderer's* having fired into the *Egmont*, and Ships firing into one another is made a Part of the Charge; please to give an Account to the Court how that happened?

A. The Misfortune of the *Thunderer's* firing into the *Egmont* was occasioned by the *Egmont's* shooting up under my Starboard-quarter while I was in the Heat of Action.—Upon the Smoke clearing away, the first Notice I had of it was seeing the *Egmont's* Jib-boom abreast of my Main-shrouds—I immediately gave Orders to put a Stop to the Firing; and I hailed the *Egmont* to back astern.—The Accident was during the Smoke, and while I was engaged; for after I saw the *Egmont* upon my Quarter, I am sure there was not one Gun fired from the *Thunderer*.—At the same Time I must take Notice, that there was not the least Confusion in the *Thunderer's* Ship's Company.

Adjourned, being Three Quarters past Three, till To-morrow Morning at Ten o'Clock.

TWENTY-SIXTH DAY.

FRIDAY, the 5th Day of FEBRUARY, 1779.

COURT met according to Adjournment. Prisoner called in, and Audience admitted.

Captain Walsingham again called in.

Prosecutor asked,

Q. Was the Ship you first began to engage with ahead or astern of the *French* Admiral?

A. Upon my Word I cannot directly recollect what Ship I fired at first; I believe the Admiral, because many Ships fired at me whose Shot fell short, and I received the Fire of two or three Ships that went through my Sails, hulled me, and went

over me, before I fired a Shot, which was not till I thought myself within Point Blank.

Q. During the Time you was engaged, was you ahead or astern of the *Victory*, or on one Side, or how?

A. I was astern of the *Sandwich*, which was astern of the *Prince George*, the Ship next to the *Victory*; and there I remained the whole of the Action.

Q. Was you in the Evening, when the Fleet was forming a Line ahead or astern of the *Victory*, upon the Starboard Tack?

A. Ahead.

Q. What

Q. What Time did the Red Division quit the Station of the Vice-Admiral of the Blue?

A. To the best of my Recollection, before Five.

Q. Did you happen, after you were out of Action yourself, to take Notice of the Ships that remained in Action, particularly the Vice-Admiral of the Blue?

A. As soon as I was out of Action, I went into the Stern-gallery, and paid a particular Attention to the *Formidable*; and, upon my Word, I felt Satisfaction in the Manner in which she engaged, which I thought did infinite Honour to the Officers and Ship's Company. I have repeatedly expressed this, and I think to the Vice-Admiral himself.

Withdrew.

Michael Clements, *Captain of the Vengeance, sworn.*

Prisoner asked,

Q. Did the Enemy at any Time, from the Morning of the 24th to the 27th of July at Noon, when they were brought to Action, shew any Indication of designing Battle?

A. No.

Q. Did I do my utmost Endeavours as an Officer to bring them to Action during those Days?

A. Yes, I think you did.

Q. Had you commanded a *British* Fleet, in the Situation the *French* Fleet were with respect to the *English*, during the 24th, 25th, and 26th July, would you have hesitated a Moment to have led it down to Battle, on Account of the Wind and Weather, during those Days?

A. No.

Q. I am charged with having advanced to the Enemy, and made the Signal for Battle, without forming the Line, what, in your Judgment, would have been the Consequences if I had formed it, instead of closing with them as I did?

A. I do not think the Enemy's Fleet would have been brought to Action that Day, and there was a Prospect, from squally Weather, of losing them, in consequence of it.

Q. I am charged with not having advanced to renew the Battle after I had passed the Rear of the Enemy, and wore upon the Larboard Tack to stand towards them again.—Had I at any Time a sufficient Force collected to renew the Fight, or to prevent their forming a Line upon the Starboard Tack?

A. No.

Q. Was not the Signal for the Line kept flying all that Time to collect them?

A. I was so busily employed in my own Ship, that I saw no Signal for the Line on the Larboard Tack.

Q. I am charged with having wore again, and made Sail directly from the Enemy, was not my wearing at that Time to stand to the Southward a necessary Manoeuvre for the Protection of my disabled Ships, and the collecting of my Fleet to renew the Battle?

A. It was, and well executed by the *Victory*.

Q. Had it then the Appearance of a Flight?

A. No; the Reverse, it was nearing the Enemy.

Q. Did you see the *French* Fleet in the Morning of the 28th?

A. No.

Q. If I had chased towards *Ushant* in the State the Fleet was after the Action of the 27th, and with the Weather as it was, was there the smallest

Probability of coming up with the *French* Fleet before they reached the Port of *Brest*?

A. No.

Q. You have heard all the Articles of the Charge read, I therefore desire you will state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I have long had the Honour of knowing Admiral *Keppel*—I have ever had the highest Esteem for him, both as a Man of Honour, the best of Officers, and a gallant Man—I do not conceive it was possible for more to be done by the Admiral than was done during the Time the *French* Fleet were in Sight.

Prisoner has no further Questions to ask.

Prosecutor.

Q. As I cannot ask the Witness any Questions but about what relates to the Points the Admiral has examined him upon, I shall not give Captain Clements any Trouble.

Withdrew.

Captain John Macbride, *of the Bien-faisant, sworn.*

Prisoner asked,

Q. What Day was the *French* Fleet first seen?

A. Between One and Two on the 23d of July. I made the Signal for seeing them in the N. E.

Q. Did you see them the next Morning?

A. The Weather just opened towards Seven o'Clock in the Morning, when I saw them in the N. W. and made the Signal for so doing.

Q. Did you not come on board the *Victory* in a small Boat to make your Report to me of the Observations you had made?

A. I did.

Q. What were those Observations?

A. I intimated before, the Weather was exceedingly close, and shut in again almost as soon as I had discovered them: I saw Three Sail of them considerably to Leeward of the others—One had her Foretopmast gone, the other her Maintopmast close-reefed down upon the Cap, from which I conceived she was crippled likewise; and as the Weather had come in so exceedingly close, I imagined the Admiral might not see them, which was the Reason of my going down to acquaint him with their Situation.

Q. Was the Body of the *French* Fleet to Windward of the *English* Fleet?

A. They were from the N. W. to W. and by N.—The Three Sail I speak of, bore about N. and by W. and were at least Three Leagues to Leeward of the Body of the Fleet.—There were Two Sail still more to Leeward, and which bore about N. N. E. from me.

Q. What Orders did you receive from me in consequence of the Report you made?

A. The Admiral observed, that those Two Ships must be cut off, or the Enemy must come down to support them; and therefore ordered me to go to Captain *Maitland* of the *Elizabeth*, then about a Mile upon his Starboard-bow, and acquaint him, it was the Admiral's Orders we should chase, and attack those Two Ships, notwithstanding he should make the Signal for the Line of Battle, and we were to proceed on, unless he made the Signals for the Cruisers in that Quarter to return.

Q. Was the Weather at that Time such as to prevent Ships fighting their Lower-deck Guns carrying the Degree of Sail that Ships could fight under?

A. Undoubtedly

A. Undoubtedly any Ship could have fought her Lower-deck Guns when I could go on a Mes- sage in a Six-oared Cutter, and row as fast as the Ships sailed.

Q. Did I soon after make a Signal for a general Chace, when I carried the Fleet to the Northward; and did it not occasion a Separation from Two of their capital Ships?

A. It did.

Q. If the *French* Fleet had intended Battle, was not the Prevention of such Separation a great Temptation to them to bring it on?

A. Most assuredly.

Q. Did the Enemy at any Time from the Morning of the 24th to the 27th at Noon, when I brought them to Battle shew any Indication of designing Battle?

A. They never did.

Q. Did I do my utmost Endeavours as an Officer to bring them to Battle during those Days?

A. You did, by carrying as much Sail as the slow sailing Ships of your Fleet could possibly keep up with you under.

Q. Had you been Senior Officer of a Squadron of *British* Ships, and had been in Sight of a like Number of *French* Ships in the Situation the *French* Fleet was with respect to the *English* Fleet during the 24th, 25th, and 26th of July, would you have hesitated a Moment to have carried it down to Battle on account of the Wind and Weather during those Days?

A. If I had, I should never have deserved to have set my Foot in this Country again.

Q. After the *Victory* had passed the *French* Fleet in Action, and had wore, and was standing to the Northward towards the Enemy again—Did it appear to you at that Time, or at any Time when the *Victory* was on the Larboard Tack, that I had a sufficient Force collected to have attacked the *French* immediately upon wearing, or to have interrupted their forming their Line afterwards upon the Starboard Tack?

A. You had not.

Q. Did you see the Signal for the Line whilst on the Larboard Tack flying on board the *Victory*?

A. I did. In a few Minutes after the Signal for Battle was hauled down, the Signal for the Line of Battle ahead was made.

Q. Did you see the *Formidable* pass the *Victory* on the Starboard Tack while I was advancing on the Larboard Tack with the Signal for the Line flying?

A. I did.

Q. Had she passed the *Victory* and gone astern of her before I made the Signal to wear to the Southward?

A. She had.

Q. Did you see the Signal for the Line of Battle on board the *Victory* when she was afterwards on the Starboard Tack?

A. I did.

Q. Had the Fleet's standing to the Southward with the Sails they had set with the Signal for the Line of Battle flying, the least Appearance of a Flight?

A. It had not—It struck me as the well-timed Manoeuvre of a judicious Officer, and the only one at that Time in his Power to collect his Fleet that were in great Disorder, from the Damages they had received, and to cover Five Ships that were much to Leeward, from the Enemy, who were advancing towards them—And I attribute to that, and the judicious Position Sir Robert Harland took with Part of the Red Division, that

the *French* were prevented advancing at a very critical Time upon the *British* Fleet.

Q. Could not the *French* have attacked the *British* Fleet while they were standing to the Southward if they had chosen to have done it?

A. If our good Fortune had placed us in their Situation, and they in ours, if we had not demolished them, we ought to have been sent to the *Justitia* Ballast-lighter.

Q. Did you observe the Signals that were made on board the *Victory* in the Afternoon, and repeated by the repeating Frigate?

A. I did.

Q. Did the Signals and Motions of the *Victory* at any Time convey to you an Idea that the Admiral did not intend to renew the Fight in the Afternoon of the 27th of July?

A. Not in the least.

Q. Can you assign any Reason why the *French* were not re-attacked in the Afternoon?

A. I apprehend you waited for the Vice-Admiral of the Blue and his Division to come down agreeable to the Signal then flying.

Q. Did the Vice-Admiral of the Blue bring his Division down?

A. He did not.

Q. If the Vice-Admiral of the Blue, with the Ships of his Division had, even as late as Six o'Clock, bore down into his Station, do you not think there was still Day-light enough to have fallen upon the Enemy, and attacked them, and have obliged them to have surrendered or run away before Night?

A. It certainly would have determined whether they meant to have stood their Ground, or run away by Daylight, for there were still Two Hours and a Half good Daylight at that Time of the Year.

Q. At what Distance was the Vice-Admiral of the Blue from his Station at Five o'Clock, and how did he bear of you?

A. He was upon my Weather-beam about Three Miles.

Q. Did any Thing appear to you to prevent his bearing down?

A. His Foretop-sail only was unbent, any interior Reasons I can be no Judge of.

Q. How long was his Foretop-sail unbent?

A. Upwards of Four Hours.

Q. Did he ever make any visible Effort to come into the Line?

A. None that I observed?

Q. At the Close of the Evening, how far was the Van of the *French* Line drawn up with the *English* Fleet?

A. The Tenth Ship of the *French* Van was abreast of me, and a short Two Miles to Leeward.

Q. What Sail did you carry during the Night of the 27th to keep in your Station?

A. Close-reefed Top-sails, no Fore-sail, and sometimes the Maintop-sail aback, sometimes the Mizentop-sail; in short, we had but just Steerage Way to keep our Station in the Line of Battle.

Q. Did you observe any Motions of the *French* Fleet in the Night of the 27th?

A. It was very dark; there was not the least Appearance of Signal or Light, till between Ten and Eleven, when a Rocket was thrown up in the Center, and repeated from Van to Rear, after which every Half Hour, and sometimes oftener, a Light was shewn, and a Flash like that of a Musquet repeated, and continued so till Day broke.

Q. Did you see the *French* Fleet, or any Part of them on the 28th of July?

A. I

A. I saw Three Sail in the Morning, which were at Distances of Van, Center, and Rear, and I suppose were the Ships that were playing their Monkey Tricks all Night.

Q. What did you take them to be?

A. The Ship abreast of me was a Line of Battle Ship; the next, which was abreast the Center of our Fleet, I am confident was a Frigate, the other I could not judge of; the Ship nearest me was about Four Miles distant, rather more than less.

Q. Was there any Ship between you and the French Ships?

A. None.

Q. Were there any Signals made for Ships to chase them?

A. Yes, mine among others, and I did chase that Ship till I was called in, so that if any other had been between me and her I must have seen it.

Q. Could you have pursued the Chase with any Effect?

A. There is no knowing what the Consequence of the Chase would have been.

Q. Did you gain upon her whilst you did chase?

A. I chased so short a Time, that I cannot determine, but as no other Ship could back my Ship, I must of course have been left with Three, and that was the Reason, I suppose, why the Admiral called me in.

Q. If I had followed you in the State the Fleet was from the Action of the 27th, with the Weather as it was, was there the smallest Probability of coming up with the French Fleet before they reached the Port of Brest?

A. I do not think if our Fleet had not been much damaged, they could have come up with Ships that had got so great a Start ahead, and the small Run we had to chase in, for I was only Twenty-one Leagues from Ushant, according to my Reckoning; and I beg to add, that I believe Half our Ships were Twelve Months foul, and some of them near Two Years; I believe the French were cleaner than we were.

Q. You have heard all the Articles of the Charge read, therefore I desire you will state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I know of none, and I think Admiral Keppel realized upon those Days every favourable Opinion that his Country ever formed of him.

Prisoner has no further Questions to ask.

Prosecutor.

Q. Have you not frequently passed in a Deal Cutter from Ship to Ship, when it has not been possible for Ships to open their Lower-deck Ports.

A. Perhaps I may have done it, but that was not one of the Days.

Q. Had it not blown very strong that Night, and had not one of the French Ships carried away her Foretopmast?

A. It had blown strong, but I do not think that a French Ship carrying away her Foretopmast, is any Proof of the Weather.

Q. With what Part of the French Fleet did you engage?

A. Between the *Valiant* and the *Foudroyant*.

Q. Was that ahead of the *Victory*?

A. Yes.

Q. Whether in that Situation you had any Occasion to observe the *Duke*; or any other Ship, fired into the *Foudroyant*?

A. No.

Q. When the Admiral was standing on the Larboard Tack towards the Enemy, did any of the Ships that were stationed in the Line ahead of

you, get into their Stations before the Admiral wore again?

A. They did not, because I ought to have been ahead of him myself, but as the Vice-Admiral of the Blue was standing upon the Starboard Tack meeting the *Victory*, I thought the Line was going to be inverted, which kept me astern of the *Victory*, as well as the *Prince George*.

Withdrew.

*The Honourable John Leveson Gower,
Captain of the Valiant, sworn.*

Prisoner asked,

Q. Did you see the French Fleet on the Morning of the 24th?

A. Yes.

Q. Were they to Windward or to Leeward?

A. At first they were nearly ahead, but the Wind came more to the Northward, and we broke off, and they came broad upon the Weather-bow, that is to say, the Body of them; for there were Two broad upon the Lee-bow, and another a little upon the Lee-bow.

Q. Did I order a general Chase?

A. Yes.

Q. Was the Weather such that the *Valiant* carried her whole Topfalls upon a Wind?

A. When I first made Sail, I had a Reef in the Topfalls, and soon after let that Reef out, and then I had the Topgallant-stayfail set, with all the Reefs out, and the Topgallantfalls upon them, and had so till the Signal was made to call me in.

Q. Did I make the Signal for the Line of Battle on the Afternoon of the 24th?

A. Yes, between Six and Seven o'Clock I think it was.

Q. Did I pursue the French Fleet from this Time to the Hour I brought them to Action?

A. They went off as fast as they possibly could, and we used every Endeavour to get up to them.

Q. Had you commanded a British Fleet in the Situation the French Ships were with Respect to the English during the 24th, 25th, and 26th of July, would you have hesitated a Moment to have led it down to Battle on account of the Wind and Weather during any Part of those Days?

A. I certainly should not have hesitated.

Q. Was there on the 27th in the Morning any greater Indication of the French Fleet designing to come to Action, than on the preceding Days?

A. No.

Q. What in your Opinion would have been the Consequences if I had formed the Line of Battle early in the Morning of the 27th, instead of bringing up the Leewardmost Ship by Signal to chase?

A. They would have got clear off without ever being brought to Action.

Q. As I am charged with having stood to a great Distance beyond the Enemy before I wore and stood towards them again, I desire to know whether that Fact be true?

A. It is not true, for you wore in Ten Minutes after the Firing ceased from the *Victory*, or thereabouts.

Q. Do you mean the Signal for wearing, or the Wearing itself?

A. The Signal.

Q. Did I make the Signal for the Line of Battle as soon as I had wore?

A. Immediately after having passed me the Signal for the Line of Battle went up at a Cable's Length.

Q. Was that the properest Signal I could make to collect the Fleet together?

Q q

A. I

A. I think so.

Q. I am charged with having shortened Sail instead of advancing to the Enemy, I desire to know if I had a sufficient Force collected to admit of my advancing faster than I did?

A. The *Valiant* was not in a Condition to make Sail for near an Hour after I came out of the Fire, and there were several Ships to the Southward of the *Valiant*, astern of you a great Way.

Q. Did you see the *French* Fleet wear and begin to form their Line on the Starboard Tack?

A. Just as I made Sail on the Larboard Tack to stand after the *Victory*, I was told the *French* Ships were wearing, I went to look at them, and saw Two or Three of them had got round upon the Starboard Tack, and others seemed to be wearing and following them, some before the Wind, and some upon the Larboard Tack, some one Way and some the other, and seemed to be forming their Line upon the Starboard Tack, they all came out upon the Starboard Tack at last.

Q. Had I a sufficient Force collected at this Time to have prevented their forming?

A. No, you had not.

Q. I am charged with having wore at this Time improperly, and made Sail directly from the Enemy, was it so or not?

A. The Enemy soon edged away for Four or Five of our disabled Ships that were to the Southward, and soon after you wore, you kept away for those disabled Ships to prevent the Enemy cutting them off I suppose, and steered about parallel with the *French* Fleet in general; I soon got ahead of the Admiral into my Station, and when I was ahead of him, he went directly down for the disabled Ships.

Q. Did I make every necessary Signal to form the Line and collect the Fleet on the Starboard Tack?

A. Yes, I think so.

Q. Do you recollect what Sail the *Victory* carried?

A. When?

Q. After getting on the Starboard Tack in the Afternoon?

A. Double-reefed Topsails and Forefail, I never saw any other.

Q. Did not the Sail I carried, admit the Headmost of the *French* Fleet to range up with me under their Topsails.

A. In general, he had his Topsails set with a Stayfail forward, he once set his Forefail for a little while, and then backed his Mizentopfail, and hauled up with the Lee-clew-garnet of his Forefail.

Q. What Sail did the *Valiant* carry?

A. Double-reefed Topsails, the Foretack aboard, and the Foresheet sometimes hauled ast, and sometimes the Mizentopfail aback.

Q. Had this Manoeuvre of the *English* Admiral, as you have stated it, the least Appearance of a Flight?

A. Not in the smallest Degree.

Q. Could not the *French* Fleet have attacked the *British* Fleet at any Time if they had thought proper, during the Afternoon?

A. Certainly.

Q. At what Distance was the Vice-Admiral of the Blue from his Station at Five o'Clock?

A. He was broad upon the Weather-quarter, about Two and a Half, or Three Miles, from the *Valiant*.

Q. Did any Thing appear to you to prevent his bearing down?

A. The *Formidable's* Foretopfail was unbent, but I saw no Masts nor Yards gone.

Q. How long was the Foretopfails unbent?

A. I never saw it bent, but it might have been bent between Seven and Eight o'Clock, for after I gave over all Thoughts of Action, I never troubled my Head about any Body.

Q. Did the Vice-Admiral of the Blue make any Signal to inform the Admiral that he was disabled?

A. Not that I saw.

Q. Did you ever see him repeat the Signal for the Line of Battle in the Afternoon?

A. I never saw any Signal on board the *Formidable* in the Afternoon, but the blue Flag at the Mizentopfail, besides Pendants; there were Pendants out in the Evening.

Q. Can you assign any Reason why the *French* Fleet were not re-attacked that Afternoon?

A. Till about Four o'Clock, very few Ships were with the *Victory*, and from that Time till Night, the Rear Division did not come down into their Stations; with an Exception to Two or Three pretty late.

Q. Do you think I should have renewed the Action that Afternoon, if the Vice-Admiral of the Blue had led his Division down?

A. From your very spirited behaviour before that, I have not a Doubt about it.

Q. What Sail did you carry to keep in your Station during the Night of the 27th?

A. Three Topsails and Foretopmast-stayfail, and sometimes the Mizentopfail aback.

Q. Did you see the *French* Fleet in the Morning of the 28th?

A. I saw only Three Sail.

Q. If I had chased towards *Ushant* in the State the Fleet was after the Action of the 27th, the Wind and Weather as they were; was there the smallest Probability of coming up with the *French* Fleet before they reached the Port of *Brest*?

A. I think not.

Q. Your Station being nearest me during the Pursuit of the Enemy, and on the Day during the Action, which gave you an Opportunity of observing my Conduct, and seeing Objects in nearly the same Point of View with myself; I desire you will state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I do not know any such Instance.—I then thought, and now think, that your whole Conduct was spirited, able, and great.

Prisoner has no further Questions to ask.

Prosecutor asked,

Q. You have stated that when the Admiral wore and stood towards the Enemy, he had not a Force collected sufficient to advance with during the Time the *French* were forming their Line. Account for that, the Admiral having the whole of his Division, and such Part of the Vice-Admiral of the Blue's Division as had joined him during the Battle, and went out of Battle with him; and what was the Reason, why they could not have supported him?

A. At that Time, there were Five Sail to the Southward of me, One of which (the *Sandwich* I believe) was a Three-decked Ship;—the *Elizabeth* I had passed, was standing upon the Starboard Tack, and another Ship upon my Lee-beam, or abaft the Beam at that Time, with her Head to the Southward; and there were Two of the Vice Admiral of the Red's Division, One with her Foretopfail-yard gone, and another, I

do

do not know whether her Maintop-sail was gone, or what was the Matter with her, but there she was (it was the *Berwick* I think)—and my Ship was at that Time between Two and Three Miles from the Admiral, her Foretop-sail-yard having been gone, and the Cross-jack-yard, and the Main-sail was gone all to Shivers, and the Foot of the Foresail was cut too, the Mizzen-yard was gone, and every Stay in the Ship, and every Brace and Bowline, but the Forestay; also, Five Main and Five Fore-shrouds, and Three or Four Mizzen-shrouds were cut.—I only mention these as Reasons for my being there.—The Two Ships belonging to the Red Division were to Windward.

Q. Was the rest of the Red Division in a Situation, and as far as appeared to you, in a Condition for immediately re-attacking if it had been thought right so to do?

A. They were too far distant for me to judge exactly of their Condition.—I mean the Ships that were with their Admiral, the Vice of the Red.

Q. Was not the Red Division the least engaged of any of the Three Divisions, and the first out of the Engagement, consequently the least damaged and capable of being the soonest fit for Action?

A. They certainly were the first out of Action; how much they had of it, I really cannot tell.

Q. In Answer to a former-Question, you said that the Admiral had not a Force about him to enable him to advance; do you attribute that to the Ships not being able to close with him?

A. I do:—I judge from my Situation;—I could not.

Q. From your Account of the Condition of our Ships and their Situations, are we to understand that the *British* Fleet was so much beaten that they were not able to renew the Attack, or to do it so soon as the *French*?

A. About Four o'Clock, a great many Ships had got into their Stations, I suppose they were only cut in the Manner I was, and that they formed as soon as they got to Rights, and after that, I do not know any Reason why they might not have renewed the Attack, except what I mentioned before, that your Division did not come down; I do not pretend to say why they did not, I can only say they did not.

Q. At the Time you speak of, about Four o'Clock, was not the Vice-Admiral of the Red and his Division formed, and in the Station of the Vice-Admiral of the Blue?

A. Yes, but they soon after went ahead.

Q. Was not the Vice-Admiral of the Blue and Part of his Ships, the last that came out of Action?

A. Certainly.

Q. Can you suppose any other Reason for the Admiral's ordering the Red Division into the Station of the Vice-Admiral of the Blue, but that of his being but just come out of Action, and that he had Reason to conclude, that the Blue Division were not capable of taking their Stations at that Time?

A. I do not exactly know when the Vice-Admiral of the Red did get there, I only saw him there at Four o'Clock. You must have been a great while out of Action at Four o'Clock.

Q. You have mentioned your observing Two or Three Ships drawing out of the Body of the *French* Fleet; did you observe those Two or Three Ships first shape their Course directly for the *Formidable*, then lying alone with her Head towards

the Enemy, and within Gun-shot of their Rear?

A. Not having Occasion to look to the *Formidable*, I did not observe her at that Time.—I was in the Admiral's Division, and therefore had no Business to look after any Body else: I do not exactly know when those Two or Three Ships drew out, but it could not be more than Ten Minutes, or a Quarter of an Hour. As soon as I was told of it, I went forwards, and they seemed to haul up in Four or Five Minutes.—Afterwards they told me they had bore away, they steered Two or Three Points from the Wind.

Q. Did you observe them to range up under the Lee of one of our Ships that was left a great Way astern, and fire at her, and afterwards point towards the crippled Ships which you mention to Leeward?

A. I never saw them fire after passing upon the different Tacks.

Q. Were those the Ships that became the leading Ships of the new-formed Line?

A. I think they were, but there were Intervals I did not look at them.

Q. Had those Ships been attacked, would not that have effectually succoured our Ships supposed to be crippled, and have prevented their forming a new Line?

A. Those Ships could not have been attacked without attacking the whole of the *French* Fleet.

Q. You have mentioned Ships that were left so far astern as the *Vengeance* and the *Formidable*; you have mentioned Three Miles astern; do you attribute their Distance to the *Victory's* out-sailing them, or that the others were not able to carry Sail to keep up with them.

A. I never said the *Formidable* was astern, I said, broad upon the Weather-quarter.

Q. Is not that astern?

A. No; rather abaft my Beam, but not a great Way—Two or Three Points.

Q. Did you ever set her by Compass?

A. No; but I saw her as I walked the Quarter-deck, therefore she must be broad upon the Weather-quarter.

Q. What Time did the Red Division quit the Rear?

A. It was between Four and Five, I believe—a little while after I got into my Station.

Q. Are you positive as to the Time?

A. No, I say between Four and Five, I cannot be exact as to Time,—it was between Four and Five, to the best of my Recollection.

Q. You say you did not see the Signal for the Line of Battle on board the *Formidable*, but that you saw the blue Flag at the Mizzen-peak; can you recollect so as to speak with Precision, whether that blue Flag was not hoisted under the Signal for the Line of Battle?

A. I am very sure it was not, when I saw it; I did not look at the *Formidable* from first to last, but when I saw that blue Flag there was nothing over it.

Q. Will you at this Distance of Time say, it is not possible to mistake in your Remembrance. There was a Time of that Flag being hoisted in the Course of the Afternoon, before the Time you are speaking of; might not you be thinking of that?

A. I must say it is a very extraordinary Question after what I have positively said, that I did not look at the *Formidable* from first to last, but when I saw that blue Flag there was nothing over it.

Withdrew.

Captain

Captain John Jervis, of the *Foudroyant*,
sworn.

Prisoner asked,

Q. From my first seeing the *French* Fleet to the Time of their being brought to Battle, did they shew any Intention of coming to Action, or did they always avoid it?

A. On the 23d *July*, in the Afternoon, when the *French* Fleet was first discovered by the *English* Fleet, I did think they shewed a Disposition to give Battle; from the 24th in the Morning, as soon as they discovered the Force of the *English* Fleet, I am convinced they never did design to give Battle.

Q. Did I do my utmost Endeavour as an Officer to bring them to Action from the Morning of the 24th till they were brought to Action?

A. You used the most unremitting Endeavours.

Q. Had you commanded a *British* Fleet in the Situation the *French* Fleet was, with respect to the Fleet under my Command during the 24th, 25th, and 26th of *July*, would you have hesitated a Moment to have led it down to Battle on account of the Wind and Weather on any Part of those Days?

A. Any Officer who had hesitated a Moment would have been unworthy Command in the *English* Fleet.

Q. Do you remember the Signal being made early in the Morning of the 27th *July*, for several Ships of the Vice-Admiral of the Blue's Division to chase to Windward?

A. I do.

Q. Was there at that Time any greater Indication of the *French* Fleet's designing to come to Action than on the preceding Days?

A. There was not.

Q. What was the Position of the Vice-Admiral of the Blue and his Division at this Time?

A. To the best of my Recollection, the Vice-Admiral of the Blue in the *Formidable* was on the Lee-bow of the *Foudroyant*, at the Distance of Three Miles and a Half or thereabouts.

Q. What, in your Judgment, was the Object of that Signal, and do you think it a proper one under the Circumstances in which it was made?

A. I reflected upon the Signal when it was made, so that I have no Sort of Doubt in answering the Question. I observed at the Time, that it must have been made to combine the Division of the Vice-Admiral of the Blue with the Center Division?

Q. What, in your Opinion, would have been the Consequences if I had formed the Line of Battle early in the Morning, instead of bringing up the Leewardmost Ships by Signal to chase?

A. I am clearly of Opinion you would not have brought the *French* Fleet to Action that Day.

Q. Did you see the *French* Fleet upon the Larboard Tack just before the Action began?

A. I did.

Q. Was not our getting into Action with the Enemy very sudden and unexpected, from the Shift of Wind?

A. That was the principal Event which produced it.

Q. What would have been the Consequence if I had formed the Line of Battle at this Time?

A. You would have given Opportunity for the Enemy, when they were in great Disorder, to have got into some Form, and thereby subjected

your Fleet to an Attack before it could have been got into Order, or given the *French* Time to escape out of Gun-shot, if they had been disposed so to do.

Q. As I am charged with having advanced to the Enemy, and made the Signal for Battle without having formed the Line, I desire you will inform the Court if you think I was justifiable in doing so, under the Circumstances you have stated?

A. To the best of my Judgment and Ability you certainly was.

Q. I am charged with having stood to a great Distance beyond the Enemy before I wore to stand towards them again, I desire to know of you if the Fact be true?

A. It is not true.

Q. Did I make the Signal for the Line of Battle as soon as I had wore?

A. You did.

Q. Was that the properest Signal I could make to collect the Fleet together?

A. It was the properest Signal, and the Signal that required the most prompt Obedience.

Q. I am charged with having shortened Sail instead of having advanced to the Enemy, I desire you will acquaint the Court whether I had a sufficient Force collected to admit of my advancing faster than I did?

A. To the best of my Recollection, when I approached you upon the Larboard Tack, a little before Three o'Clock, you had not more than Two or Three Ships near you of your own Division, the rest were at a considerable Distance astern.

Q. Had I at any Time whilst I stood on the Larboard Tack, a sufficient Force collected to renew the Fight?

A. You had not.

Q. Did you see the *Formidable* upon the Larboard Tack at any Time after the Action?

A. I did not.

Q. Did you see the *French* Fleet wear and begin to form their Line on the Starboard Tack?

A. I did.

Q. Had I at this Time a sufficient Force collected to have prevented their forming?

A. You had not the Means in any Sort.

Q. I am charged with having wore at this Time, and led the *British* Fleet directly from the Enemy, I desire you will explain this Matter to the Court?

A. It appeared to me you had at the Time Two great Objects in View, in wearing the *British* Fleet, and standing as you did; the first and principal was, to cover Four or Five disabled Ships of your Fleet in the S. S. E.; the other, to give Opportunity to the Vice-Admiral of the Blue and his Division to form in their Station astern of you.

Q. Did I make every necessary Signal to form the Line, and collect the Fleet on the Starboard Tack?

A. I do not know a Signal you could have made which you did not make to produce that Effect?

Q. What Sail did I carry during the Afternoon?

A. To the best of my Remembrance, you carried your double-reefed Topails and Foresail, the latter much shot, as well as the Foretopail.

Q. Was not the Sail I carried necessary for the Protection of the disabled Ships, and could the Degree of Sail I did carry, possibly have prevented the Vice-Admiral of the Blue from coming into the Line?

A. The

A. The Sail you carried appeared to me well-proportioned to effect both those Purposes.

Q. Did not the Sail I carried permit the *French* to range up with me under their Topsails?

A. It did.

Q. Had this Evolution, or my subsequent Conduct, as you have stated it, the least Appearance of a Flight?

A. Very much otherwise.

Q. Could the *French* Fleet have attacked the *British* Fleet at any Time they had thought proper during the Afternoon?

A. They could, and at some Periods of the Afternoon with great Advantage.

Q. Where was your Station in the Line of Battle ahead on the Starboard Tack?

A. The next to and astern of the *Victory*.

Q. When did you get into it, and did you preserve it?

A. I got into it as you wore, at or about Three o'Clock, and I never was out of it till Four o'Clock the next Morning.

Q. Did you think I intended to renew the Battle if I could have formed the Line?

A. I did, and as a Proof of it turned my People up, thinking it advisable to say a few animating Words to them.

Q. What prevented my forming the Line?

A. The Vice-Admiral of the Blue not leading his Division down into his Station.

Q. Was he in a Situation to have led his Division down into the Line?

A. He appeared so to me.

Q. Did any Thing appear to you to prevent his bearing down?

A. There was nothing visible to me but a Foretopfail unbent.

Q. How long did you observe the *Formidable's* Foretopfail unbent?

A. To the best of my Remembrance it was near Four Hours unbent; I cannot speak positively to Time, it appeared to me the greatest Part of the Afternoon, after we were upon the Starboard Tack.

Court asked,

Q. Could he have got into his Station under his Maintopfail and Forefail?

A. I believe he could.

Q. How many Points might he have kept away?

A. About Four Points, I think; he appeared to me to be always in the Wind's Eye of his Station?

Prisoner asked,

Q. Did the Vice-Admiral of the Blue ever make any Signal to inform the Admiral that he was disabled?

A. I never saw any such Signal.

Q. Did you ever see him repeat the Signal for the Line of Battle?

A. I did not.

Q. What Sail did you carry in the Night of the 27th to keep your Station?

A. We had double-reefed Topsails pretty much shot, so as to make it dangerous to hoist them taught up, and I think there was at least a reef wanting of the hoist, and I do not recollect any other Sail but a Forestayfail bent for a Mizzen, the Maintopfail was frequently aback, that we might keep astern of the *Victory*, and a very difficult Operation it was to preserve the Line.

Q. You have mentioned your Forestayfail bent for a Mizzen, was your Mizzenmast damaged?

A. The Mizzenmast-head had been shot away just under the Cap, the Mizzen-yard had been also shot away; that is to say, divided.

Q. Have you got the Bearings and Distance from *Ushant* on the 28th.

A. I cannot speak to them from Memory, they are in the Log, I believe (*Looked into the Log-book*). On the 28th *Ushant* bore N. 79° E. 21 Leagues by the Log that Day.

Q. Your Station being nearest me during the Pursuit of the Enemy, and after the Action, which gave you an Opportunity of observing my Conduct, and of seeing Objects nearly in the same Point of View with myself, I desire you will acquaint the Court of any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th and 28th of July?

A. With great Respect to you, and great Deference to the Court, I hope I shall be indulged in having that Question put by the Court.

The Question was altered, and put by the Court as follows:

Court asked,

Q. Your Station being nearest the Admiral during the Pursuit of the Enemy, and after the Action, which gave you an Opportunity of observing the Admiral's Conduct, and of seeing Objects nearly in the same Point of View with himself, acquaint the Court of any Instance, if you saw or knew of any such, in which the Admiral negligently performed any Part of his Duty on the 27th and 28th of July?

A. I feel myself bound by the Oath I have taken to answer that Question; I believe it to be consonant to the general Practice of Sea Courts Martial; I cannot boast a long Acquaintance with Admiral *Keppel*; I never had the Honour to serve under him before; but I am happy in this Opportunity to declare to this Court and to the whole World, that during the whole Time the *English* Fleet was in Sight of the *French* Fleet, he displayed the greatest naval Skill and Ability, and the boldest Enterprize, on the 27th of July; which, with the Promptitude and Obedience of Vice-Admiral Sir *Robert Harland*, will be Subjects of my Admiration and of my Imitation as long as I live.

Court asked,

Q. Relate to the Court the Defects of your Masts, Sails, and Rigging, after you came out of the Action?

A. The Mainmast had one Shot very near through the Head of it, between the Cat-harpings and the Hounds, it entered on the Starboard Side, and pierced one of the Cheeks of the Mast, went through the Heart of the Mast, and lodged in the other Cheek—several other Shot in the Mainmast, but not of so much Consequence as that I have mentioned—the Foremast had Two or Three Shot in it—the Bowspit had an Excavation on the lower Side of it. To the best of my Recollection, about Nine Inches diameter of the lower Side of the Bowspit shot away—the Foretopmast was so much wounded as to oblige us to reef it—the Mizzenmast was totally disabled, which was of very little Consequence to the *Foudroyant*—the running Rigging was, I believe, every Rope of it cut, some in two or three Places—the Shrouds were in a great Measure demolished—there was no Brace or Bowline left in the Ship—there was scarce a Halyard, the Forestay, Topmast-stays, and Topmast-springstays, Topsails, and Halyards—the Sails were very much shattered, particularly the Topsails.

Being Three o'Clock, the Court adjourned till To-morrow Morning at Ten.

TWENTY-SEVENTH DAY.

SATURDAY, the 6th Day of FEBRUARY, 1779.

COURT met according to Adjournment.
The Prisoner was brought in, and Audience admitted.

Captain Jervis called in again.

Prisoner asked,

Q. Did you see the *French Fleet* on the 28th in the Morning?

A. I did not see the *French Fleet*; I saw Three Sail of the *French Fleet*, and some Time afterwards the Man at the Mast-head said he saw Eight Sail bearing S. E. pointing with his Hand to the S. E.

Q. Did you see any Signal made to chase the Three *French Ships*?

A. To the best of my Remembrance, I saw the Signal made for Three Sail to chase to the N. E.

Q. Was your Ship in a Condition to have chased?

A. She was not.

Q. If I had chased towards *Ushant*, in the Condition the Fleet were, in their Masts and Yards from the Action of the 27th, was there any Probability of our coming up with the Fleet of *France* before they reached the Port of *Brest*?

A. There certainly was not the smallest Probability.

The Prisoner has no further Questions to ask the Witness.

Prosecutor asked,

Q. I think you said in your Examination Yesterday, that on the Morning of the 27th the *French* shewed no more Disposition for engaging than on the preceding Days—I would ask, if that appeared so to you, why did you think it necessary to take Seven of the Vice-Admiral of the Blue's Division from him, to combine them with the Center, on that Day, any more than on any other Day?

A. I have stated, in my Answer to that Question, that the Vice-Admiral of the Blue and his Division were Three Miles and a Half to Leeward of the *Foudroyant*, which would give them, I believe, Three Miles to Leeward of the *Victory*; they were under a very low Sail—the *Formidable* with her Main-sail up, and, to the best of my Recollection, going still farther to Leeward—and it was absolutely necessary, in my Opinion, they should make Sail to get to Windward. I would add, that in my Judgment, and I believe I made an Observation upon it at the Time, that the Vice-Admiral of the Blue accepted the Meaning of the Signal; for he certainly did make a considerable deal of Sail, very soon after those Ships had made Sail, in Obedience to the Signal.

Q. If my Memory does not deceive me, you alter your Account of the Position of the Vice-Admiral of the Blue very different from what you stated it Yesterday. If I do not mistake, you then said the *Formidable* was upon the *Foudroyant's* Lee-bow, at Three Miles Distance; now you convey an Idea of her being wholly to Leeward Three Miles.

A. I did not mean to quibble about an Idea, or to convey any Thing that was not exactly so.

When I said upon the Lee-bow, I did not say upon what Point of the Lee-bow; it is a very common Expression; but to the best of my Judgment, I was very near the Beam of the *Victory*; I was abaft her Beam, but not much. I did not mean, I am sure, to take any Advantage of you, or to say any Thing in Favour of the Admiral that was not true. All I wish by the Answer I have given is, to convey to the Court, that the *Formidable* was much farther to Leeward than her Station in the Order of Sailing prescribes—and that is precisely my Idea.

Q. If those Ships had been permitted to remain with their proper Admiral, might not they have gone into Action with him as he did, and in the same Place where the Commander in Chief began Action?

A. I see no Reason why they could not; but I am not a competent Judge of that Part of the Fleet; and I must beg Leave to state the Cause that brought the Fleet into Action at all—which Cause did not exist when those Ships chased. To make it as accurate as possible, I would wish to fix it, as was really the Fact, upon a material Shift of Wind in our Favour, which Shift of Wind did not happen, I believe, for Four Hours after those Ships chased.

Q. Look at your Log-book, and inform the Court how much the Wind shifted from Six till Ten o'Clock that Morning.

Captain Jervis looked in his Log-book.

A. The Wind shifted one Point at Eight o'Clock, and between Eight o'Clock and Twelve o'Clock it shifted Two Points in Favour of the Fleet. The Wind stands at S. W. at Eight, and at Twelve it stands at W. S. W. But I do not suppose a very great Stress will be laid upon a Shift of Wind whilst we were in Action. It stands so here—but I have never looked into the Log-book since the Day of Action till now. A great deal was due to an Evolution performed very successfully (and much beyond my Expectations)—which was that of tacking the Fleet together. We continually looked up, after we wore about, for the *French Fleet*, and continued looking better and better for them.

Court asked,

Q. You speak here upon your Oath—from your own Knowledge.

A. Yes; I have nothing to do with the Log-book; I speak not from that, or from any Minutes; I govern myself by the Effect of the Wind upon the Ship, and not the Point itself; I cannot speak to any Point, nor will I. I do not speak to the Points of Wind or Compass at this Distance of Time; I do not refresh my Memory by Log books, or any other Minutes, for I have looked at none. I pay no Regard whatever to it; though I would not have a Log-book under me altered upon any Consideration upon Earth, yet I do not pay much Faith to a Log-book taken at such a Time; because when Officers are attentive to an Enemy and to the Commander in Chief, they do not put down every Shift of Wind, except accurate Persons are appointed for that Purpose alone.

Q. Did you ever know, or ever hear of a Commander in the Third Post of a Fleet to have his Ships drafted from him, and he left to go into Action

tion without being supported by the Ships of his own Division?

A. Before I answer that Question, I beg to observe, I do not know that such a Fact existed on the 27th of July; but I certainly never did hear of such a Thing; but I would have it understood, I do not admit the Fact to be so.

Q. Whether the *French* Fleet's Manœuvre in wearing did not contribute to bring them to Leeward, and occasion the *British* Fleet to lie better up with them than if they had not done so.

A. I must beg you will fix the Period of Wearing.

Q. If they wore at any Time before the Time of coming to Action?

A. I saw them between Eight and Ten in the Operation of Wearing, and they certainly did fall to Leeward. The Circle described in Wearing must have brought them further to Leeward than they were before; there is no Doubt of it.

Court asked,

Q. Notwithstanding that, could you have fetched the Van of the Fleet at the Time you came into Action?

A. No, not in the *Foudroyant*.

Prosecutor asked,

Q. There was another Manœuvre of the *French* Fleet—what was it?

A. That Manœuvre was very much obscured by thick Weather; but to the best of my Belief and Judgment, it was an Attempt to perform the same Evolution they had observed successfully performed by our Fleet, with Intent to pass us to Windward, and to avoid an Action; that is my Belief; several of them did stay—others missed Stays—and to that I ascribe the Confusion and Disorder I saw them in.

Q. In a distant View of a Fleet changing their Position from one Tack to the other, does it not naturally give an Appearance of Confusion, though they may be performing their Evolution successively in the Wake of each other, Part standing one Way, Part another?

A. It unquestionably does; but the Disorder in Part of the Center and Rear did continue till the Center and Rear of the Fleet had passed me, during the whole Time I was in Action with them. I do not speak to the Confusion—but the Disorder certainly did continue, for they were in no Line.

Q. Can you say, whilst the *French* were upon the Starboard Tack, after having wore as you have described, whether, during the Time they were upon that Tack, they did not lead large?

A. I do not recollect that I saw the Fleet lead large, after the whole were wore.

Q. If the Rear Division of the Vice-Admiral of the Blue had remained together, and engaged in like Manner, in a connected Body, with their own Admiral, as the other Divisions of the Admirals of the Fleet did, would they not have supported each other, have done more Execution, and suffered less than by engaging singly and separately?

A. I do not know that any Part of the Question did really exist.

Q. Whether the Ships which chaced by Signal were not by that Means separated at a Distance from their Admiral, and at Distances from each other, different to what they were before?

A. I did not know it existed at the Time the Vice-Admiral of the Blue came into Action—I was otherwise too much employed—I was very attentive to my own Business.

Q. After the Action was over, and the Admiral had laid his Head to the Northward again, what

was the Situation of the Red Division at the Time the Admiral wore the second Time?

A. In the *Foudroyant* I weathered a great Part of the Vice-Admiral of the Red's Division; when I say that, I mean Four or Five Sail. I was very covetous of the Wind, because, disabled as I then was, I conceived the Advantage of the Wind only could carry me into Action again. When I approached the Admiral upon the Larboard Tack, which, to the best of my Recollection, was near Three o'Clock, and I had then got upon his Weather-beam, I observed the Vice-Admiral of the Red with a Part of his Division upon my Weather-beam, or thereabouts, to the best of my Recollection; but I cannot speak positively to the precise Point of the Compass, or the Angle of the Ship. They were to Windward of me.

Prosecutor asked,

Q. Were they ahead withal?

A. I cannot say. They were ahead of me, but I do not think ahead of the *Victory*; if they were, it was very little; but these particular Circumstances, the Distance of Time being so great, I cannot recollect. There were some Things struck me very forcibly, which I do recollect; but there are many others my Memory does not go to by any Means; and I little expected to be called upon this Occasion, or I might have remembered them better.

Q. You stated in your Examination Yesterday, whilst the Admiral was standing towards the Enemy on the Larboard Tack, that he never had a collected Force proper to advance with—that none of the Ships took their Stations in the Line of Battle—that the Admiral made the properest Signal for collecting the Ships, which was the Signal for the Line—If, whilst the Admiral was upon that Tack, did he ever make the Signal for Ships to Windward to bear down, or for any particular Ships to make more Sail, or the Signal for observing any particular Ships being out of their Stations?

A. I did not see those Signals made, which the Vice-Admiral of the Blue alludes to, while we were upon the Larboard Tack; if they had been made, very few Ships could have obeyed them, from the Situation they were then in; I am sure I could not.

Q. I think you said you saw the *French* wear and stand to the Southward—Can you give any Reason why it was necessary to require an exact Line of Battle for advancing and attacking the Enemy at that Time, more than was requisite in the Morning?

A. The Admiral is charged with not having collected his Ships together, and not keeping so near the Enemy as to renew the Battle so soon as it might be proper. In Reply to that Part of the Charge, I say, the Admiral made the Signal for the Line of Battle; which, in my Judgment, was the properest Signal for calling the Ships together for the Purpose of renewing the Action, or for any other Purpose of conducting a Fleet down to the Enemy at that Time, disabled as the Fleet then was.

Q. Am I to understand, from your Account in general, that the Condition of the Fleet was such, that it was not proper to face the Enemy, and renew the Attack when they stood towards us, before they formed into a Line?

A. The Fact is, that we did face the Enemy?

Q. But whilst they were facing us, did not our Fleet wear, and stand the other Way?

A. We wore, certainly—I described the Object of that Yesterday.

Q. Did you ever know, or hear of a *British* Fleet

Fleet turning their Sterns upon an Enemy of equal or inferior Force, that Enemy standing towards them, immediately after having been engaged with them?

A. I deny the Fact, in all its Extent and Meaning.

Q. You have said, that whilst the *English* Fleet was standing to the Southward, the *French* could have fetched and attacked them—In that Case were not our Sterns towards them?

A. I answered to the Whole of this Yesterday—I explained the whole Manœuvre, in Answer to a Question put by the Admiral, and shall not explain it farther, unless the Court require it.

Q. In an Answer you gave Yesterday, you mentioned the Fleet edging down to Four or Five crippled Ships; were not Three of those Ships of my Division?

A. I did not know at that Time what Ships they were.

Q. You said Yesterday, that the Sail the Admiral carried, during the Afternoon, could not prevent the Vice-Admiral of the Blue keeping up with him, and keeping his Station.—Do you know whether the Distance you have stated the *Formidable* to have been at of Three Miles, was occasioned by any Neglect of the *Formidable*, in not keeping up with the Admiral?

A. I have not stated any such Thing, neither the first Part nor the latter—There was no Distance specified in the Afternoon—nor is the first Part rightly stated.

Q. Did you know the particular Condition of the *Formidable* at that Time?

A. I never pretended to any such Knowledge.

Q. When did the Red Division quit the Station of the Vice-Admiral of the Blue?

A. They were never in it; I mean in the Afternoon.

Q. Were not they nearly so?

A. No, by no manner of Means.

Q. Whereabouts was you during the Afternoon—ahead or astern of the Admiral?

A. Astern of the *Victory*, in my Station, which I never quitted for a Moment.

Q. Did not the Red Division form astern of the Admiral?

A. The greatest Part of the Red Division did, a considerable Distance astern of the *Foudroyant*.

Q. What Time did they quit that Station?

A. To the best of my Recollection—I cannot speak positively to Time, about Five o'Clock.

Q. Was not the Vice-Admiral of the Blue, and the Ships of his Division, the last that came out of Action.

A. They certainly were; they must have been from their Situation.

Q. Have not you understood that they suffered more than the Ships of the other Divisions?

A. It did not appear to me, at that Time, they had suffered more than many Ships of the Center Division—The *Formidable* certainly did appear to have suffered very much; but I conceive the Ship I commanded suffered as much as any Ship in the Fleet, in every Sense, except in Killed and Wounded, which I am happy did not happen.

Q. Was not the Red Division the first Part of the Fleet that came out of the Action; consequently had been the longest out in the Evening?

A. Yes, I believe so.

Q. Are the Sailing and Fighting Instructions you receive, signed by the Commander in Chief, or are they ever signed by the Flag Officers of separate Divisions?

A. I never was of any Division, but that of the Commander in Chief.

Court.

This being new Matter, the Court observed it is not proper for Cross-Examination.

Q. You have said, you did not see the Signal for the Line repeated on board the *Formidable*—was not the Signal, which was flying on board the Commander in Chief, a sufficient Warrant for every Ship to take their Stations when they were able to do so?

A. I must beg the Interposition of the Court upon this Question; for this is leading me to reflect upon the Conduct of the Captains of the Vice-Admiral of the Blue's Division, whom I have the highest Opinion of.

Court asked,

Q. You need not answer it, as it is Matter of Opinion.

A. I do not see any other Application it will bear.

Q. No such Application was meant; for the following Question would have been put, Whether they could take their Stations whilst they were occupied by other Ships?

A. I have already denied that Fact.

Q. You have been asked, whether you saw the Vice-Admiral of the Blue make any Signal of Distress; I should be glad to understand what Signal of Distress it is supposed was applicable at that Time?

A. Though I am not accountable for the Questions that have been asked, I will repeat I did not know the particular Station of the *Formidable*; and I never pretended to any such Knowledge.

Court asked,

Q. Was the Weather such that a Boat could pass from our Ship to another, without Danger, at that Time?

A. The best Proof of it is, that a long Boat of ours was floating between the *French* Fleet and ours, without any Body to guide her; but it was certainly Weather that any Boat might have lived in.

Prosecutor asked,

Q. You said you kept close to the *Victory* the whole Afternoon?

A. From Three o'Clock; from the Time the Admiral wore.

Q. Then of course your Rates of going were the same?

A. Undoubtedly they must have been.

Q. Were you fired into by the *Duke*, or any other *British* Ship, during the Engagement that Day?

A. I never knew that the *Duke* fired a Shot that Day, till several Days after the Action.—I do not believe, that any Ship fired into the *Foudroyant*, but the *French*.—I never heard of a Shot appearing on the Larboard Side, nor did I ever conceive that such a Thing had happened.

Q. Were any Men wounded or blown up by an Explosion on board the *Foudroyant*?

A. I did not know of any Explosion, till the Action was over; the Lieutenant, who commanded One of the Decks, reported to me, that a Man had been killed in the Act of putting a Cartridge into a Gun, and the Cartridge went off.—It was a Story I could not well account for—I believe we sent Two Men and a Boy to the Hospital, who were blown up—both the Men recovered, and are now in the Ship.

Court asked,

Q. Inform the Court, in Answer to Part of the Fourth and Fifth Articles of the Charge, whether,

to your Knowledge, Admiral *Keppel* did any One Act, between the 23d and 29th of *July*, disgraceful to the *British* Flag?

A. I have already answered that Question very fully, in a Reply I gave Yesterday; but I am ready to say, I did not know any one Instance in his Conduct that was disgraceful to the *British* Flag, and I do say it.

Q. Do you know of Admiral *Keppel*'s having lost an Opportunity, during the Time before-mentioned, of doing a most essential Service to the State, and, by losing that Opportunity, tarnishing the Honour of the *British* Navy?

A. I know of no such Instance.

Withdrew.

Captain Robert Kingsmill, of the *Vigilant*, sworn.

Prisoner asked,

Q. I am charged with having advanced to the Enemy, and made the Signal for Battle, on the 27th *July*, without forming the Line; what, in your Judgment, would have been the Consequence if I had formed it, instead of closing with the Enemy as I did?

A. That the *French* Fleet would not have been brought to Action that Day.

Q. I am charged with not having advanced to renew the Battle, after I had passed the Rear of the Enemy, and wore upon the Larboard Tack, to stand towards them again—Had I, at any Time, a sufficient Force collected together to renew the Fight, or to prevent their forming a Line on the Starboard Tack?

A. No.

Q. Was not the Signal for the Line kept flying all that Time to collect them?

A. It was.

Q. I am charged with having wore again, and made sail directly from the Enemy—Was not my Wearing again, at that Time, to stand to the Southward, a necessary Manœuvre for the Protection of my disabled Ships, and the Collection of the Fleet to renew the Battle?

A. I think it was a very proper Manœuvre, both for the Protection of the disabled Ships, and to give an Opportunity to collect the Ships to renew the Battle.

Q. Had it the least Appearance of a Flight?

A. No, certainly not.

Q. Do you recollect what Sail I carried in the Afternoon, and during the Night?

A. I do not recollect what Sail the *Victory* had; but I recollect that we were in our Station ahead of the *Victory*, under double reefed Top-sails, very often with our Mizentop-sail aback to keep in our Station with her.

Q. Did you see the *French* Fleet in the Morning of the 28th?

A. I saw Three Sail of the *French* Fleet in the Morning of the 28th going large before the Wind, with all their Studding-sails set?

Q. Did you see any Signal out for Ships to chase them?

A. There were some Pendants out, but I do not recollect for what Ships. I remember one of my Lieutenants telling me, that he believed our Signal was out; but on looking again, we found it was not our Signal was out.

Q. If I had chased with the Fleet towards *Ushant*, in the State the Ships were after the Action of the 27th, with the Wind and Weather as they were, was there the smallest Proba-

bility of coming up with the *French* Fleet before they reached the Port of *Brest*?

A. I do not think there was the smallest Probability.

Q. You have heard all the Articles of the Charge read, I therefore desire you will state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th and 28th of *July*?

A. I can state to the Court no Instance of Negligence, nor do I know of any; but that you discharged your Duty with the Ability of a great and gallant Officer.

Prisoner has done with the Witness.

Prosecutor asked,

Q. Do you remember stopping your Fire on board the *Vigilant*, because of your firing into One of our Ships?

A. I do not.

Withdrew.

Sir Charles Douglas, Bart. late Captain of the *Stirling Castle*, sworn.

Prisoner asked,

Q. Did the *French* Fleet shew any Intention of coming to Action, from the 24th of *July* to the 27th, when they were brought to Battle; or did they endeavour to avoid it?

A. By no Means, to the best of my Recollection, but ever did endeavour to avoid it.

Q. Did I do my utmost endeavour as an Officer to bring them to Action during those Days?

A. To the best of my Knowledge and Recollection, with unremitting Assiduity.

Q. Had you commanded a *British* Fleet in the Situation the *French* Fleet were with respect to the Fleet under my Command, during the 24th, 25th, and 26th of *July*, would you have hesitated a Moment to have led it down to Battle, on account of the Wind and Weather on any Part of those Days?

A. To the best of my Remembrance, and to the best of my Judgment, had I had the Honour of commanding a *British* Fleet under such Circumstances, I could not have desired better Opportunity than daily did offer to have given Battle to a *French* Fleet, turning up towards, and endeavouring as the *British* Fleet actually did, to bring them into Action?

Q. As I am charged with having advanced to the Enemy on the 27th of *July*, and made the Signal for Battle, without forming a Line, what in your Judgment would have been the Consequence if I had formed, it instead of closing with them as I did?

A. Judging of their farther Conduct by the past, had the Admiral formed his Fleet in a Line of Battle on the 27th in the Morning, I do not think he could have brought them to Action at all, and even without having formed a Line; had it not been for a Shift of Wind, I do not think we should have fetched within Cannon Shot of any Part of their Fleet?

Q. How many Ships had the Vice-Admiral of the Red with him, advancing with him on the Larboard Tack towards the Enemy after the Action?

A. I really do not positively recollect how many.

Q. Was your Ship one?

A. I was one of the Number that followed Sir Robert Harland towards the Rear of the Fleet in the *Stirling Castle*, which I then had the Honour to command.

Q. I am charged with having hauled down the Signal for Battle, by which the Red Division was prevented from renewing the Fight upon the Larboard Tack. Acquaint the Court what in your Judgment would have been the Consequence, if by keeping abroad that Signal, or by making any other, I had ordered the Vice-Admiral of the Red to advance with the Ships with him to attack the Enemy at that Time?

A. To the best of my Judgment I think that such a Measure would have been attended with disadvantageous Consequences, such Part of the Red Division not having been of sufficient Force to have attacked the whole of the *French* Fleet, and moreover not having been close up together.

Q. Did you see the *French* Fleet wear and begin to form the Line on the Starboard Tack?

A. I do recollect to have seen a Part of the *French* Fleet—I cannot say whether the whole or no—make Sail ahead on the Starboard Tack, and some of them form into a Line of Battle ahead, but I cannot say exactly at what Time this was, nor how many of them were yet formed at the Time I allude to, but cannot fix.

Q. I am charged with having wore to stand to the Southward at this Time, and leading the *British* Fleet directly from the Enemy; did my Wearing at this Time appear to you to be a necessary Manœuvre, or had it the Appearance of a Flight?

A. Your Wearing to the Southward did to me then appear to be a necessary Manœuvre, nor had it surely by any means the Appearance of a Flight, nor did it ever in the smallest Degree make an Impression on me to that Effect.

Q. What Sail was you under during the Night of the 27th?

A. To the best of my Recollection in general under the Three Topails, and Mizentailsail, sometimes the Fore Tack aboard, the Foresail very often hauled up, much to the Fatigue of my Ship's Company, for the Ship being foul, I did not dare to use the common Expedient of backing my Mizentailsail for fear of driving me down to Leeward, and putting the Fleet into Confusion; I do not recollect how often my Foresail was up and down, but it was very often indeed.

Court asked,

Q. Had you any Reefs in your Topails?

A. My Topails were double-reefed, and my Maintopmast having been shot through both above and below the Cap, and the Bowspit shot through Two Turns into the inner Gammoning, I did not dare to let a Reef out to follow my Admiral, as I undoubtedly otherwise should have done, I thought it better to compromise with the Weather to preserve my Mast with double-reefed Topails, than to run the Risque of carrying them away, by carrying too much Sail; I now allude retrospectively to my having followed Sir *Robert Harland*—to the best of my Remembrance we did sometimes haul aft the Maintopmast staysail-sheet, and I am not very sure, though I was very tender of my Bowspit, whether I did not also once or twice hoist the Foretopmast-staysail, and now I hope I have been sufficiently minute.

Q. From the very bad Sailing of your Ship as you have described, did it occasion you to fall so far astern of the Red Division as to be in the Center Division?

A. Not that I can recollect.

Q. Did you, during the Night of the 27th, and at what Time, order your Men to Quarters, upon a Ship ranging up with you which you thought was one of the Enemy?

A. At or about the first Dawning of the Day,

having my Leader, the *Berwick*, in my Eye, and yet coveting to keep myself to Windward, and being then actually rather upon her Weather-quarter; to the End that I might have it in my Power to assume my Place with more precision in the Line of Battle as Day-light should advance, I observed a Ship ranging up upon my Weather-quarter, I think about Three Points; not knowing who it might be, I thought it prudent to order my Ship's Company to their Quarters, and resume our Preparation for Battle, which had been for some Time discontinued.

Q. What Ship was it?

A. As that Ship approached towards our Beam, I could plainly discern a Flag at her Foretopmast-head, the Colour whereof I could not yet ascertain with Certainty; passing further along, and no Act of Hostility having passed between us, I presumed it to be the *Formidable*, although she had neither Top nor Poop-light, nor Ensign flying.

Court asked,

Q. Had she a Light at the Bowspit-end?

A. No. About this Time I bore up a little as the Day opened, that I could do it with Safety into my more precise Station in the Line of Battle ahead of the *Courageux*; the Ship in question, passing along until she got further forward, when I observed her having then a blue Ensign flying.—Seeing this Ship approach in the Manner described, I do confess I was not without some Apprehension that the Enemy had, by stretching away on the Larboard Tack, doubled upon our Rear, in order to regain the Weather-gage, and having at or about the same Time seen other Ships in the same Quarter of the Compass, my Suspicion grew the stronger in that Respect, in so much that I did ruminate upon or entertain the Idea of making the Signal for seeing strange Ships in the North West Quarter, and actually had proceeded so far in my own Mind, as to be pondering whether to make the Day or the Night Signal, which nearly fixes the Time of my having been under that Apprehension.

Q. Did you see the Lights of the Admiral of your own Division at that Time?

A. I really do not recollect that Circumstance?

Q. When the Day came, was you then sure it was the Vice-Admiral of the Blue that you had seen before?

A. To the best of my Recollection and Remembrance it could be no other.

Prisoner asked,

Q. On the 28th, if I had chaced towards *Ushant*, with the Fleet in the Condition it was after the Action, as to its Masts and Yards, was there the least Probability of coming up with the Fleet of *France*, before they reached the Port of *Brest*?

A. Had the Fleet of *France* observed their former Line of Conduct, there could not have been the smallest Probability of your coming up with them before they reached the Port of *Brest*—by their Line of Conduct, I mean avoiding an Engagement.

Q. You have heard all the Articles of the Charge read, therefore I desire you will state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. I did not observe any Thing done or left undone by Admiral *Keppel* on the 27th or 28th of July, bearing the Appearance of his negligently performing his Duty.

Neither the Prisoner, the Court, or the Prosecutor, having any further Questions to ask, the Witness withdrew.

Captain Philips Cosby, of the Centaur, sworn.

Prisoner asked,

(No. 1.) Q. I am charged with having advanced to the Enemy, and made the Signal for Battle without forming the Line, on the Morning of the 27th of July, what in your Judgment would have been the Consequence if I had formed it, instead of closing with them as I did?

A. We should have increased our Distance from the Enemy, and could not have brought on an Action.

(No. 2.) Q. How many Ships had the Vice-Admiral of the Red with him advancing towards the Enemy on the Larboard Tack after the Action?

A. I believe about Six or Seven; I am not certain which.

(No. 3.) Q. Was you one of those Ships?

A. The *Centaur*, which I commanded, was one of them.

(No. 4.) Q. I am charged with having hauled down the Signal for Battle, by which the Red Division was prevented from renewing the Fight on the Larboard Tack; I desire you will acquaint the Court, what, in your Judgment, would have been the Consequence, if, by keeping abroad that Signal, or by making any other, I had ordered the Vice-Admiral of that Division to have advanced with the Ships with him to have attacked the Enemy at this Time?

A. If the Red Division had been ordered to have attacked, I am sure the Admiral of that Division would have done it; but, in my Opinion, it would have been a dangerous Experiment; for, from the apparent Situation of the Fleet in general, he could not have been supported.

(No. 5.) Q. Did you see the *French Fleet* wear, and begin to form the Line on the Starboard Tack?

A. I did.

(No. 6.) Q. I am charged with having wore to stand to the Southward at this Time, and leading the *British Fleet* directly from the Enemy; did my Wearing at this Time appear to you to be a necessary Manœuvre, or had it the least Appearance of a Flight?

A. As to a necessary Manœuvre, the Commander in Chief was the best Judge of it. As to a Flight without Wings, the Idea could never strike me, from the apparent Situation of the Fleet.

(No. 7.) Q. You have heard all the Articles of the Charge read; I desire you will therefore state to the Court any Instance, if you saw or know of any such, in which I negligently performed any Part of my Duty on the 27th or 28th of July?

A. Mr. President, if I am allowed, from the Experience of Thirty Years Service, to assume an Opinion of the Conduct of any Commander in Chief, and more particularly upon so great an Officer as Admiral *Keppel*, I am of Opinion, and do firmly believe, that he did do his utmost, in every Respect, for the Good of his Majesty's Service. It is the first Time I had the Honour of being under his Command, and it has been one of the most unfortunate Events in my Service, that I had not been before.

Neither the Prisoner, Court, or Prosecutor, having any further Questions to ask, the Witness Withdrew.

Captain John Neal Pleydell Nott, of the Exeter, sworn.

Q. The Question marked in Captain Cosby's Evidence (No. 1.) was put to Captain Nott.

A. That we should not have got into Action at all.

Q. (No. 2.) repeated.

A. I cannot say exactly to their Number.

Q. As near as you can recollect.

A. Six or Seven; I cannot be positive.

Q. (No. 3.) repeated.

A. Yes.

Q. (No. 4.) repeated.

A. The Destruction of the Red Division.

Q. (No. 5.) repeated.

A. I did not see the *French Fleet* wear; I saw them after they had wore.

Q. (No. 6.) repeated.

A. It appeared a very necessary Manœuvre. I have been Thirty Years in the Service, and I never saw an *Englishman* run from a *Frenchman*.

Q. (No. 7.) repeated.

A. I know of none. I had the Honour of serving under you before, and it was the greatest Pride of my Heart when I was commissioned to serve under you again, knowing you to be a gallant Seaman, and I thought you the first Admiral in the World. Your Conduct, during the whole Time we saw the *French Fleet*, convinced me that my Judgment was right in respect to your Abilities.

He withdrew.

Honourable Captain Keith Stewart, of the Berwick, sworn.

The Question marked (No. 1.) in Captain Cosby's Evidence was put to Captain Stewart.

A. I do apprehend that the *French Fleet* could not have been brought into Action that Day, if the Line of Battle had been formed.

Q. (No. 2.) repeated.

A. I do not know; the *Berwick* was not there.

Q. (No. 5.) repeated.

A. I cannot say I did.

Q. (No. 6.) repeated.

A. To the best of my Judgment, it was a necessary Manœuvre; I never conceived it to be meant as a Flight; on the contrary, I expected to have been in Action with the Fleet before Five in the Afternoon.

Q. Did I make every necessary Signal to collect the Fleet on the Starboard Tack, in order to renew the Battle?

A. Yes.

Q. Did you see the *French Fleet* in the Morning of the 28th?

A. No.

Q. If I had chased towards *Ushant* with the Fleet, in the State the Ships were from the Action of the 27th, and with the Wind and Weather as they were, was there the smallest Probability of coming up with the *French Fleet* before they reached the Port of *Brest*?

A. I think certainly not.

Q. (No. 7.) repeated.

A. I know of none.

He withdrew.

Adjourned till Monday Morning at Ten o'Clock.

TWENTY.

TWENTY-EIGHTH DAY.

MONDAY, the 8th of FEBRUARY, 1779.

COURT met according to Adjournment.
Prisoner called in, and Audience admitted.

*Honourable Lieutenant Thomas Lumley,
of the Robuste, sworn.*

Prisoner asked,

Q. Have you got your Log-book?

A. Yes.

Q. Is your Log-book an exact Copy of the original Entry in the *Robuste's* Log-book?

A. Yes, with two or three Additions of my own, which I put in a Parenthesis.

Court asked,

Q. What Time did you put them in?

A. At the Time I wrote the Log, which was the latter End of September, or Beginning of October.

Here the Prisoner desired Mr. Lumley's Log-book (omitting the Additions in the Parenthesis) might be compared with the Robuste's Log-book on the Table for the 27th and 28th of July.

They were accordingly compared, and the Variations are as under-mentioned:

Book on the Table.

A Signal for us, and several other Ships of the Vice Admiral of the Blue's Squadron, to give chase to Windward.

Body of the *French* Fleet S. Half W. at Half past Ten;—the headmost Ships were engaged.

Between Six and Seven o'Clock, perceived on board the Admiral our and several other Signals to bear down into the Line, which was repeated by the *Formidable*. In the Evening, having stopped the Shot-holes, took our Station in the Line, and continued in it the whole Night, with as much Exactness as a disabled Ship could do with, the Admiral making much Sail.

At Day-light saw Three Sail of the Enemy very near us.—The Admiral made the Signal to chase to the S. E.

Prisoner asked,

Q. When did you first come upon Deck on the Morning of the 28th of July?

A. At Three o'Clock.

Q. Was it your Watch upon Deck?

A. No; Mr. Pitt, the Third Lieutenant, who had the Middle Watch, sent down to me at Three o'Clock, that he would be obliged to me if I would relieve him the last Hour of his Watch, as he was very sleepy.

*Mr. Lumley's Copy of
the Original Entry.*

A Signal for the Vice-Admiral of the Blue's Squadron to give chase to Windward.

Body of the *French* Fleet South and by West five or six Miles.

At Six tacked, bore down, and resumed our Station in the Line.

(Not in the Copy.)

Q. Where was the *Robuste* when Day-light first appeared?

A. On the Vice-Admiral of the Red's Weather-quarter, within Hail of him.

Q. What Sail had the *Robuste* when you came upon Deck?

A. Close-reefed Topails, Courses, Fore and Main Topmast, and Mizzen-stayails.

Q. Did you shorten Sail, or continue upon that Sail?

A. Soon after I came upon Deck the First Lieutenant came up, and finding out that it was certainly a Red Flag at the Foretopmast-head of the Ship, to Leeward, we hauled the Mainfail up, and backed the Mizentopfail, and I believe hauled the Stayails down; but I am not certain of that.

Q. Was the Vice-Admiral of the Red ahead of the Center Division at that Time?

A. Yes, he was.

Prisoner had no further Questions to ask.

Prosecutor asked,

Q. Was you present when those Corrections were made in the Log-book.

A. No; I was once present, when I saw some Leaves taking out of the Log-book, which made me believe that there was an Alteration to take place.

Court asked,

Q. You say you was present; with whom?

A. The Master and some of the Officers; it was in the Ward-room; the Captain was not present.

Prosecutor asked,

Q. Can you speak with any Degree of Precision to the Time when that was?

A. It was about the 6th of December.

Court asked,

Q. Where was your Ship then?

A. I am not sure whether she was at Spithead or in Portsmouth Harbour.

Prosecutor asked,

Q. Do you know what became of that Leaf or Leaves which you saw displaced.

A. No, I do not.

Q. Have you ever seen them since that Time?

A. No.

Q. You mentioned you relieved the Deck at Three o'Clock—Did you find the Mainfail set then?

A. Yes.

Q. Did the Officer whom you relieved tell you the Occasion of his setting the Mainfail?

A. Yes; he said, that after consulting the Captain, he was obliged to do it to keep sufficiently ahead of the Vice-Admiral of the Blue.

Q. Did he shew you the Admiral's Lights, or any Lights that he took to be the Admiral's?

A. No; the Ship which he pointed out, as the Vice-Admiral of the Blue's Ship, the *Formidable*, had no Lights on board to my Knowledge; I saw none.

Q. Was that Ship astern of you?

A. Yes.

Q. What I asked was with respect to the Lights of the Admiral commanding in Chief?

A. I did not take Notice of the Admiral's Ship.

Q. Did you distinguish the Lights of the Vice-Admiral of the Red, before you distinguished the Flag to be Red.

A. He had Lights, but I did not take Notice particularly how many.

Q. I understood you did not know where the Commander in Chief was from the Time of your coming upon Deck till Day-light?

A. No, I did not.

Court asked,

Q. When it was Day-light, where did you see the *Formidable*?

A. I did not see her at all, as I stayed on the Quarter-deck; the First Lieutenant went aft on the Poop to look for her.

Withdrew.

Robert Arnold, Master of the *Robust*, sworn.

Prisoner asked,

Q. When were the Alterations made in the *Robust's* Log-book?

A. The last Alterations were made on the 12th of December.

Q. Do you recollect at what Time of the Day the last Alterations were made?

A. Between Eleven in the Morning and Two in the Afternoon.

Q. By whose Orders were they made?

A. By Captain Hood's.

Q. Do you know if Sir Hugh Palliser was at Portsmouth at that Time?

A. No.

Q. Do you know where the *Robust* was in the Morning of the 28th of July, at Day-light.

A. Yes; she was upon the Starboard-quarter of the *Queen*, at the Distance of about two Cables-length.

Prisoner had no further Questions to ask.

Prosecutor asked,

Q. Did Captain Hood, when you made Alterations or Corrections, desire they might be such as that you might swear to the Truth of them, in case you should be called, or Words to that Purpose?

A. At the Time Captain Hood ordered these Alterations to be made, I received it as his Orders, and never opposed any Scruples of mine to them. After receiving them, I remember, upon retiring from the Cabin, Captain Hood did say, that he only wanted the Log-book to be as correct as possible; and at the same Time turning towards me and the Lieutenant, he said, I suppose you can attest this. These were his Words, I think.

Q. Who was that Lieutenant with you?

A. The First Lieutenant, Mr. Inglefield.

Court asked,

Q. Do you know that the Admiral commanding in Chief carried much Sail the Night of the 27th?

A. I was not upon Deck in the Night myself.

Prosecutor asked,

Q. When Captain Hood asked you and the First Lieutenant, whether you could attest those Corrections, what did the Lieutenant or you say, or what passed?

A. I answered yes; meaning those Facts that fell under my Observation.

Witness withdrew.

The Prisoner then addressed the Court in the following Words:

Prisoner.

Mr. President,

My Accuser, when he closed his Evidence, was

pleased to lay in a Claim, that Captain Hood should be allowed to be heard in his Justification, if I attacked his Log-book. I believe, if the Court will refer to the Minutes of the Seventh Day's Proceedings, his Justification, such as he thought proper to make, will be found already recorded; and I only desire, that the Evidence I have just produced may be applied to it.—I shall mention nothing but what Captain Hood admitted. He there says, he corrected and revised his Log-book in his own Protection, not knowing but that he should appear at your Bar, as a Prisoner instead of a Witness.—But I appeal to the Sense of the Court, whether the Alterations and Additions be such as can support the Belief, or even the Possibility of the Existence, of such a Motive—since not one of those I am going to mention, have the most distant Reference or Relation to any Fact which could involve him in Guilt, though they are all of them direct Articles of my Accuser's Charges against me. How, Sir, for Instance, could the Insertion or Omission of the Signal on the Morning of the 27th, for several Ships of the Vice-Admiral of the Blue's Division to chase to Windward, instead of the whole Blue Squadron, on which my Accuser founds his first Charge, possibly affect the Character or Conduct of Captain Hood.—How much less could the Three French Ships being seen, or not seen, very near us on the Morning of the 28th?

He surely never could be answerable for their Escape! But those Additions, although I must ever think of them with Pain, when I reflect on the Reference they have to my Accusation, the Time I have just proved them to have been made, and the Intimacy of the Person who made them with my Accuser, yet as they are certainly Facts (containing, I trust, no Guilt, but in the Opinion, or rather in the Wishes of my Accuser) and as the Log-book is not made a false Record by these Insertions, I lay no other Strefs upon them, than to shew that they could not be made for the Purposes which Captain Hood has stated to the Court.

But the one that remains behind, is of a very different Complexion indeed!—It is the Addition of a Circumstance which constitutes a capital Charge against me, and which, if it missed my Life, could not fail to destroy what is much dearer than Life to every Man who deserves to live.

Sir, it is, besides the Addition of a Circumstance which, though Captain Hood has called it, a fair and faithful Representation, has been proved by a Cloud of Witnesses to be wholly unfounded in Fact.

And what is worse than all, has been this Moment proved by the Position of the *Robust* in the Morning of the 28th, to be a Circumstance in which Captain Hood could have no possible personal Interest.

Had the *Robust* fallen astern in the Night, the Addition, though not the less criminal, would at least have been reconcileable with his Account of its being done in his own Protection. But when, instead of her being struggling to keep her Station as a disabled Ship from the *Victory's* making much Sail, she has been proved to have run Miles ahead of it during a short Night. I am intitled to say, that such Motives could not have produced the Addition. I am sure, I wish he could have formed one to protect it. I declare to you, Sir, it is a Subject of Sorrow to me, that an indisputably brave and useful Officer, which I know and acknowledge him to be, and which, on that Day,

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he approved himself to be; a Man with whom I had lived in familiar Friendship, should have been led by the Designs of *others* into such a Snare; and I can assure the Court and the Public, I have only searched to the Bottom of it for the Safety of the Service.

I lament the Alarms which Captain Hood stated in his Justification.—No Man alive can, or ought to feel more sensibly, than I do for Innocence, under the Apprehension of groundless Impeachment.—But I am not answerable for them; their Authors were unknown to me; I neither promoted or approved of them; if I ever myself mentioned the Blue Division, it was as a Body, under the Controul and Direction of their own Vice-Admiral, and not as Individuals.

I honour them all as brave Men; and it was with Astonishment that, no longer ago than *Saturday*, I heard a Question put by my Accuser, pointed directly to their Crimination; and can assure the Court, that I was well-pleased to see it so honourably and spiritedly repelled by the Witnesses to whom it was addressed.

The Prosecutor requested the Indulgence of the Court to call Witnesses to support the Credit of Captain Hood.

Court.

That is impossible.

Prosecutor asked,

Q. I apprehend it may affect his Credit as a Witness; therefore beg you will allow Witnesses to be called for the Purpose of having that Matter more clearly elucidated?

Court.

You have closed your Evidence.

Prosecutor.

I am informed of an Instance, in a good many Respects similar, where the Credit of a Witness was arraigned, in the Trial of Lord George Sackville, where an Indulgence was permitted for Evidences to be called to obviate Reflections that had been thrown upon One of the Witnesses.

Court.

It has not appeared in any Thing that the Admiral has said, that it has affected Captain Hood's Evidence at all.

Prosecutor.

If it is supposed he has inserted a Falsehood, I apprehend it may affect his Credit.

Prisoner.

The Court are the best Judges of that, because it appears upon the Minutes.

Sir John Hamilton, Bart. Captain of the Hector, sworn.

Prisoner asked,

Q. (The Question, marked (No. 1.), in Captain Cosby's Evidence, was put to the Witness.)

A. You never could have come to Action.

Q. (The Question, marked (No. 2.), repeated.)

A. Not more than Five Ships.

Q. (The Question, marked (No. 3.), repeated.)

A. I was.

Q. (The Question, marked (No. 4.), repeated.)

A. The Vice-Admiral was, at that Time, in a very critical Situation, advancing towards Five Sail of the Enemy's Line of Battle Ships.—He had no Ships near enough to support him but the *Hector*; and, in my Opinion, if the Signal had not been hauled down, he would have been liable to have been cut off.

Q. (The Question, marked (No. 6.), repeated.)

A. A necessary Manoeuvre, and had no Appearance of a Flight.

Q. If I had chaced towards *Ushant*, in the Morning of the 28th, in the Condition the Fleet was, with Respect to their Masts, Yards, and Rigging, after the Action of the 27th, and the Wind and Weather as we then had, was there the least Probability of coming up with the *French* Fleet, before they reached the Port of *Brest*?

A. Not the least Probability.

Q. (The Question marked (No. 7.) in Captain Cosby's Evidence repeated.)

A. I know of none.

Prisoner has no further Questions to ask.

Prosecutor asked,

Q. You mentioned there being only Five Sail with the Vice-Admiral of the Red—at what Period do you speak of?

A. At the Time the Signal for the Action was hauled down.

Q. How many Ships were with the Vice-Admiral of the Red when you wore to join the Admiral again?

A. At what Time does the Wearing mean?

Q. When they wore to stand to the Southward again to go down to the Admiral?

A. I cannot say what Ships were with him then; most of the Division I believe.

Q. Do you remember how many Ships of the Red Division went with the Vice-Admiral of the Red, when they formed astern of the *Victory*?

A. About Six Sail.

Q. Can you give any Account where the rest of the Division were at that Time?

A. Some of them to Leeward, and others re-fitting after the Action.

Q. Do you remember while they were to Windward, seeing the *Formidable* laying with her Head the same Way as the Red Division were laying?

A. I do not recollect it.

Q. Whilst the *Victory* was upon the Larboard Tack standing towards the Enemy, did you observe where the rest of the Ships of that Division were—whether about her, or where?

A. I was too much taken up with an Attention to my own Duty.

Q. Whilst the Admiral was with his Head upon the Larboard Tack, did you observe any Signal made for Ships to Windward to bear down?

A. The Signal to bear down was at Four o'Clock.

Q. I am speaking whilst the Admiral's Head was towards the Enemy?

A. I did observe it.

Q. I mean before the Admiral wore to stand to the Southward?

Prisoner admitted there was no such Signal then out.

Q. Was there at that Time any Signal made for particular Ships to make more Sail?

A. I did not observe it.

*Prisoner admitted there was no Signal made whilst the *Victory* was upon the Larboard Tack, but the Signal for the Line of Battle.*

Withdrew.

Captain Isaac Prescott, late of the Queen, sworn.

Q. (The Question marked (No. 1.) in Captain Cosby's Evidence was put to the Witness.)

A. That you could not have brought the *French* Fleet to Action.

Q. (The Question marked (No. 2.) repeated.)

A. Seven.

Q. (The Question marked (No. 4.) repeated.)

A. I am very certain that the Vice-Admiral of the

the Red would have punctually and cheerfully obeyed any Signal he had received from you, but the Consequences would have been fatal; the French with common professional Knowledge or Bravery, must have destroyed every Ship with him before you could have given him Support.

Q. (The Question marked (No. 5.) repeated.)

A. I saw many of their Ships before the Wind, and I afterwards saw them in a Line.

Q. (The Question marked (No. 6.) repeated.)

A. It did appear to me to be a most necessary Manoeuvre, and I cannot say it ever struck me with the least Appearance of a Flight.

Q. Did I make every necessary Signal to collect and form the Fleet into Order on the Starboard Tack, to renew the Battle?

A. You did.

Q. Did you observe any Signal or Movement on board the *Victory* that Afternoon, which conveyed to you an Idea that the Admiral did not intend to renew the Battle that Day if he could have formed his Line?

A. Not at all, I rather thought the Admiral meant to renew the Battle if he could have formed his Line.

Q. Did the *Queen* carry distinguishing Lights in the Night of the 27th, and did you see the *Victory's* at the Bowspit-end?

A. The *Queen* did carry her distinguishing Lights the whole Night; I did not in my own Person see the distinguishing Lights at the *Victory's* Bowspit-end, though I heard from my Officers that they had seen them.

Court asked,

Q. Did you see any Lights on board the *Formidable* that Night?

A. I did not.

Prisoner asked,

Q. Did you see the French Fleet in the Morning of the 28th?

A. I did not.

Q. Did you see Three Sail?

A. I did.

Q. What Distance were they?

A. Two were very near Hull down—the other Half Hull down, I believe.

Q. If I had chased towards *Ushant*, in the State

the Fleet was after the Action of the 27th, the Wind and Weather as they then were, was there the smallest Probability of coming up with the French before they reached the Port of *Brest*?

A. I think not.

Q. How far was you from *Ushant* the 28th of July?

A. Twenty-six Leagues.

Q. (The Question marked (No. 7.) in Captain *Cosby's* Evidence repeated.)

A. I cannot point out to the Court any Instance wherein you negligently performed your Duty on the 27th or 28th of July, for I know not of any. Receiving an early Part of my naval Education under your Care, I have ever looked to you with a Degree of filial Respect; your Character stands too high to stoop to my Judgment; but thus called on, I declare, and am happy to make the Declaration upon my Oath, that your Conduct on those Days added Lustre to your Name, and held you up a great and worthy Example to every Officer of the British Navy.

Prisoner has no further Questions to ask the Witness.

Prosecutor asked,

Q. You say, that if the Vice-Admiral of the Red, and the Ships of his Division with him, had advanced and re-attacked, it would have been attended with fatal Consequences—If the whole British Fleet had advanced and re-attacked, what fatal Consequences were then to be apprehended?

A. I do not apprehend that the whole British Fleet were in a State to advance and renew the Attack.

Q. Were not the French advancing towards the British?

A. Not that I observed.

Q. I mean after the Time you mention to have seen many before the Wind, and afterwards in a Line.

A. At the Time they were in a Line they were to Leeward of us, and I did apprehend the Admiral then intended to renew the Attack; but you was in your Ship so far to Windward, that I do not think it was in his Power to do so.

Witness withdrew.

Mr. Martin Ware, Master Shipwright's Assistant at Plymouth, sworn.

Prisoner.

I call Mr. Ware to give an Account of the State of the Fleet when it came into Port after the Action of the 27th July.

He delivered in several Papers containing the Defects on board the Ships of Admiral Keppel's Squadron, and withdrew.

The Judge Advocate then, at the Prisoner's Request, read several Letters which had been written by him to the Secretary of the Admiralty, Copies of which Letters, or References, are as undermentioned.

No. I.

S I R,

Victory at Sea, 21st July, 1778.

I Inclose you the only Information I have had of any Ships since I left *Eddystone*.

I made *Ushant*, and was well in with it, on the 19th. That Afternoon, the *Milford* and *Fox* chased a French Frigate, but I called them off, when tolerably near her, that I might have the whole Fleet collected before Dark. In the Evening the *Terrible* joined.

I meant to stand into *Brest* the following Morning: And early on the 20th, the Fleet was closing in with *Ushant* for that Purpose, and stood on till Ten o'Clock, when the Wind at N. by W. increased to a strong Gale, and made it prudent to carry the Fleet into the Sea, clear of the *Saints*.

During the bad Weather, I discovered some of the Ships crippled in their Masts, but the worst Accident has happened to the *Victory*, whose Mainyard broke in the Gale: I have no other Remedy but taking the Mainyard of one of the Seventy-four Gun Ships, which I shall do the Moment the Weather permits, and send that Ship to *Plymouth* for another.

I send this Letter by the *Rattlesnake* Cutter.

I am, S I R,

Your most obedient and very humble Servant,

A. KEPPEL.

Philip Stephens, Esq; Secretary to the Admiralty.

Intelligence referred to in the foregoing Letter.

AT Nine, A. M. Friday Morning the 17th Instant, brought to a Schooner, which proved to be an *American* Vessel from *Nantz*, bound to *North Carolina*, loaded with Salt and Dry Goods: sailed the 9th Instant, and was taken by a *Jersey* Privateer the 10th, and bound into that Island. On Sunday Morning the 12th Instant, the Prize-master saw from Twenty-seven to Thirty-three Sail of large Ships standing to the Northward, *Ushant* then bearing E. $\frac{1}{2}$ N. 16 Leagues it being foggy, could only see them at Times, and then not plain enough to be certain what they were; some of them appeared very large. This was all the Intelligence I could collect from him, in which he seemed very clear.

F. J. HARTWELL, *Lieutenant of the Rattlesnake.*

No. II.

S I R,

Victory at Sea, the 23d July, 6 P. M. 1778.

IT is not in my Power to write you any Thing perfect, for the Information of their Lordships, and yet it seems to me too important a Moment, to lose any Time in letting you know, that I had with some Pains and Difficulty got the Fleet into the Latitude of *Brest*.

A very great Sea, and foggy Weather, made me judge it expedient at Eight o'Clock this Morning to bring to; the Fog prevented my seeing the whole of the Fleet till Noon, when I perceived the Fleet of *France* within Four or Five Miles, as near me as the farthest of my own Fleet, the Wind then at North.

I immediately made the Signal for the Fleet to form the Line of Battle, bearing East and West, and wore, laying the *Victory's* Head with the Maintop-sail to the Mast, towards my own Fleet in the South-West Quarter, and hoisted my Flag and Colours.—The *French* Fleet appeared to stand towards us—It became very foggy, but at Four o'Clock the Weather clearing up, it was perceived the *French* was standing from the King's Fleet to the N. E. I immediately made the Signal for the Fleet to wear, still keeping the Signal for the Line of Battle abroad, only changing it for the Ships to bear N. E. and S. W. from each other, and set much Sail, though I fear, without possible Hopes of coming up with the *French* Ships this Afternoon, unless they are as desirous of closing as I am.—Thirty-six Sail and more has been counted, but I am not yet able to determine the Number of Line of Battle Ships—Both the *French* and *English* Fleet are now steering N. E. *Ushant* bearing by Reckoning N. 86° o' E. Distance 66 Miles.

I fear the Object of the *French* is to get near their own Coast.

This I send by the *Peggy* Cutter, and I am,

S I R,

Your most obedient and very humble Servant,

A. KEPPEL.

Philip Stephens, Esq;

P. S. Notwithstanding what I wrote to you in my Dispatch of the 21st, the *Thunderer* is still with the Fleet.

The Frigates I have sent ahead to keep between the King's Fleet and that of *France*.

A. KEPPEL.

No. III.

Victory at Sea, 5 P. M. 24th July, 1778.

[See the Letter copied at large, Page 101.]

No. IV.

Victory at Sea, 30th July, 1778.

[See the Letter copied at large, Page 52.]

No. V.

S I R,

Victory at Sea, the 30th July, 1778.

I Have judged it expedient for the Safety of the Trade expected Home, and in Hopes of meeting with the *East* and *West* India Convoys, to detach the *Valiant*, *Bienfaisant*, and Two Frigates, to cruize from the Latitude $49^{\circ} 50'$ to $47^{\circ} 30'$ N. about 30 Leagues to the

the Westward of *Scilly*, with Orders, in case of falling in with any one of the Convoys, for one of the Two Deck Ships to see them in Safety as far as *Plymouth*.—They are to remain Fourteen Days on this Service, and then repair to *Plymouth Sound*.

I am, S I R,

Your most obedient and very humble Servant,

A. KEPPEL.

Philip Stephens, Esq; Secretary to the Admiralty.

No. VI.

S I R,

Victory, Cawsand Bay, the 14th August, 1778, $\frac{1}{2}$ past 8, A. M.

DEEMING the Purport of the inclosed Letter from Captain *Leveson Gower* of the *Valiant*, giving an Account of his having fallen in with the Homeward-bound *Leeward Island Fleet*, will give their Lordships, and the whole Nation, the highest Satisfaction; I have thought it right to dispatch it away by Express.

I received the Letter this Morning by the *Arethusa*. The Convoy is, by this Time, I conclude past this Place. The *Valiant* I expect will be in here in a few Hours.

I cannot help observing to their Lordships the Propriety with which Captain *Leveson* has conducted himself on this Occasion. The *Milford* and *Porcupine*, that I sent off *Portland* a few Days ago, will be in the Way to cover the Convoy passing that Headland.

I am, S I R,

Your most obedient and very humble Servant,

A. KEPPEL.

Philip Stephens, Esq; Secretary to the Admiralty.

Copy of Captain *Leveson Gower's* Letter to Admiral *Keppel*, dated *Valiant*, August 13, 1778, at Noon; the *Lizard* bearing N. by W. 3 Leagues.

S I R,

I CRUIZED with the Ships you left with me, till the 7th of this Month, between $48^{\circ} 30'$ and $49^{\circ} 50'$, without seeing any Kind of Vessel that had the least Appearance of being an Enemy or a Cruizer; on that Day Captain *Marshall* chased a Ship of Twenty-four Guns, which he thought was an *American*; he got within Two Miles of this Ship, and then lost her by a Fog coming on, for he had kept Sight of her after it became dark. The 9th, I chased a Lugger, which was certainly a Privateer, but he went as well as the *Valiant*, and this Vessel also escaped; however, we had better Luck on the 11th, when I took a French Ship called *La Flore*, of Two Hundred and Seventy Tons, loaded with Coffee, Cotton, and Sugar, and a French Snow of One Hundred and Fifty Tons, called *La Jeune Henriette*; they both came from *Guadaloupe*, and were intended for *Havre-de-Grace*; the Day after, the *Proserpine* took a French Brig, called *Le Fort Janson*, from *Martinico*, going also for *Havre*. These Vessels all sailed from the *West Indies* with Sixty more, under Convoy of the *Prothie* of Sixty-four Guns, *La Blanche* and *La Tortur-elle* of Thirty Guns, but parted from them Thirty-four Days ago. Fifty-three of the other Vessels are bound to Ports in the *Bay*, and they are probably arrived; for on the 5th the *Proserpine* spoke to a Danish Ship, which told him, he had some Days before fallen in with a French Convoy in Lat. 46° . Yesterday Morning I fell in with the *Seaford* and *Grass-hopper*, who had about Sixty Sail under their Convoy from the *Leeward Islands*; they are now so far safe, and I shall continue with them as far as the *Eddystone*; the *Cygnets* and upwards of Sixty more came out with these, and only parted from them Three Days ago, those being bound up *St. George's Channel*.

I hope you will not be displeased at my having presumed to order the *Proserpine* to remain off *Scilly* Three Days longer, to pick up any of the Stragglers of this Convoy, and to endeavour to catch the Ship the *Arethusa* chased, and the Lugger that got away from the *Valiant*. I have ordered Captain *Marshall* to make the best of his way to *Plymouth*, as I think it must give you great Satisfaction to know, that this Convoy (worth Two Millions, I am told) is now safe to the Eastward of the *Lizard*.

I am, S I R,

Your most obedient and most humble Servant,

J. LEVESON GOWER.

Off the Land's End I saw Two Dutch Ships of War, which the *Bienfaisant* is gone to speak to.

The Judge-Advocate afterwards read Two Letters from the Secretary of the Admiralty to the Prisoner, of which the following are Copies.

S I R,

Admiralty-Office, 2d August, 1778.

I RECEIVED Yesterday by Captain *Faulkner*, and immediately communicated to my Lords Commissioners of the Admiralty, your Letter of the 30th ultimo, giving an Account of your Proceedings in the Pursuit of the *French Fleet* from the 24th to the 27th, and of your Engagement with it on that Day.—The Earl of *Sandwich* lost no Time in laying your said Letters before the King, and I have it in Command from my Lords to acquaint you, that his Majesty was thereupon graciously pleased to express the fullest Approbation of your Conduct, and Satisfaction in the Account you have given of the spirited Behaviour of the Vice-Admirals Sir *Robert Harland* and Sir *Hugh Palliser*, and of the Captains, Officers, and Men of the Fleet.

Their Lordships commanded me to send you their Congratulations upon the Victory you have obtained, in Addition to which I beg Leave to offer mine, and have the Honour to be,

S I R,

Your most obedient humble Servant,

PH^{*P*}. STEPHENS.

Honourable Admiral Keppel, Plymouth.

S I R,

Admiralty-Office, 17th August, 1778.

I HAVE received and communicated to my Lords Commissioners of the Admiralty your Letters of the 13th and 14th Instant, the latter inclosing one from Captain *Gower* of the *Valiant*, giving an Account of his Proceedings with respect to the Protection given to the *West India Fleet*; and in Return I have it in Command from their Lordships to acquaint you, that they much approve of his Conduct, and desire you will please to signify the same to him. I have the Honour to be, with great Regard,

S I R,

Your most obedient humble Servant,

PH^{*P*}. STEPHENS.

Honourable Admiral Keppel at Plymouth.

Prisoner.

The Court will see by those several Letters, that I have neither concealed nor put false Glosses upon any Part of my own Conduct.

Mr. President, I have now closed my Evidence, and shall make no Observation upon it. I submit the whole to the Wisdom and the Justice of the Court.

The Prosecutor addressed the Court in the following Words :

Mr. President, There being no other Witnesses to examine, it is my Intention to address the Court with some Observations, as well on the Evidence as on the Admiral's Defence, for which Purpose I beg to be indulged by the Court with a short Time finally to prepare myself. If the Trial had not run into so extraordinary a Length, I should not wish for longer Time than till To-morrow, but with such a Mass of Evidence to be observed upon, I hope the Court will not think it unreasonable to indulge me till *Wednesday*, more especially as the Admiral has thought fit in some Measure to defend himself by criminating me.

The Prisoner objecting to this, being unprecedented, the Court retired, and after staying an Hour, returned, when the following Resolution was read :

“ The Court having declared in a former Resolution taken in the Course of this Trial, when the Prosecutor said he had gone through all the Witnesses he should produce in Support of the Charge, that the Paper then offered by the Prosecutor could not be admitted; and the Court continuing of the same Opinion, Agreed, That now it is declared the whole Evidence, not only on the Part of the Charge but of the Defence, has been closed, nothing further by Way of Address from either Party can be received.”

The Court then adjourned till To morrow Morning at Ten o'Clock.

TWENTY-NINTH DAY.

TUESDAY, the 9th of FEBRUARY, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

The Court being immediately cleared, the Members entered into Consideration of the Evidence that had been received in the Course of the Trial;—also read and considered several Papers which had been produced and were remaining on the Table;—continued sitting till Three o’Clock, and then adjourned till To-morrow Morning at Ten o’Clock.

THIRTIETH DAY.

WEDNESDAY, the 10th of FEBRUARY, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

The Court being immediately cleared, a further Progress was made in debating on the several Matters which had arisen in the Course of the present Inquiry.

After several Hours spent, the Court came to the following Resolution :

“ That the Charge is malicious and ill-founded :—that Admiral *Keppel*, so far from having, by Misconduct and Neglect of Duty on the Days alluded to in the Charge, lost Opportunity of rendering essential Service to the State, and thereby tarnished the Honour of the *British* Flag, behaved as became a judicious, brave, and experienced Officer ; and that the Court do therefore unanimously and honourably acquit the said Admiral *Keppel* of the several Articles contained in the Charge against him.”

The Sentence was drawn up, and signed accordingly.

The Court adjourned, at Three o’Clock, till To-morrow Morning at Eleven o’Clock.

THIRTY-FIRST DAY.

THURSDAY, the 11th of FEBRUARY, 1779.

THE Court met according to Adjournment.

The Prisoner was brought in, and Audience admitted.

The Judge-Advocate pronounced Sentence as follows :

AT a Court Martial assembled on board his Majesty’s Ship *Britannia*, in *Portsmouth* Harbour, the 7th of *January* 1779, and held by Adjournment at the House of the Governor of his Majesty’s Garrison at *Portsmouth* every Day afterwards (*Sundays* excepted), till the 11th of *February*, 1779, inclusive.

P R E S E N T,

Sir Thomas Pye, Admiral of the White, President.

Matthew Buckle, Esq; Vice-Admiral of the Red, till the Close of the Sixth Day, when he became unable any longer to continue his Attendance, on account of Sicknefs.

John Montague, Esq; Vice-Admiral of the Red.

Mariot Arbuthnot, Esq; } Rear-Admirals of the White.

Robert Roddam, Esq;

Captains *Mark Milbanke*.

Captains *Francis Samuel Drake*.

Taylor Penny.

John Moutray.

William Bennet.

Adam Duncan.

Philip Boteler.

James Cranston.

The Court, pursuant to an Order of the Lords Commissioners of the Admiralty, dated the 31st of *December* 1778; and directed to *Sir Thomas Pye*, proceeded to enquire into

into a Charge, exhibited by Vice-Admiral Sir *Hugh Palliser*, against the Honourable *Augustus Keppel*, for Misconduct and Neglect of Duty, on the 27th and 28th of *July* 1778, in sundry Instances, as mentioned in a Paper, which accompanied the said Order, and to try him for the same: And the Court, having heard the Evidence, and the Prisoner's Defence, and maturely and seriously considered the whole, are of Opinion, that the Charge is malicious, and ill-founded; it having appeared, that the said Admiral, so far from having, by Misconduct and Neglect of Duty, on the Days therein alluded to, lost Opportunity of rendering essential Service to the State, and thereby tarnished the Honour of the *British* Flag, behaved as became a judicious, brave, and experienced Officer. The Court do, therefore, unanimously and honourably acquit the said Admiral *Augustus Keppel*, of the several Articles contained in the Charge against him: And he is hereby fully and honourably acquitted accordingly.

GEO: JACKSON,
Ju. Ad.

THO. PYE.
J. MONTAGU.
MARIOT ARBUTHNOT.
ROB. RODDAM.
MARK MILBANK.
FRANCIS SAMUEL DRAKE.
TAYLOR PENNY.
JOHN MOUTRAY.
WILLIAM BENNETT.
ADAM DUNCAN.
PH. BOTELER.
JAMES CRANSTON.



Please to correct a Mistake in Page 43, in the Paper of Signals, Line 3, for 3 Hours 20 Minutes, read 3 Hours 23 Minutes.
And in the same Paper, Line 17, for *Mixentopsail* Yard-arm, read *Maintopsail* Yard-arm.

A P P E N D I X.

No. I.

THE Admirals and Officers being assembled, and their Names called over, in order to the constituting the Court, Captain *Walsingham* observed, that he had heard several Officers' Names repeated, who were junior in Rank to himself, and desired to know why he was to be excluded.

The Judge-Advocate produced and read the following Case and Opinion.
Nothing further was said.

No. II.

C A S E.

22 Geo. II. } Enacts, " That from and after the 25th Day of *December* 1749, it shall be lawful
Cap. 33. } " for the Lord High Admiral of *Great Britain*, or the Commissioners for executing
Sect. 11. } " the Office of Lord High Admiral for the Time being, and they are hereby respectively
" authorised from Time to Time, as there shall be Occasion, to direct any Flag Officer
" or Captain of any of his Majesty's Ships of War, who shall be in any Port of *Great*
" *Britain* or *Ireland*, to hold Courts Martial in any such Port, provided such Flag Officer
" or Captain be the First, Second, or Third, in Command, of such Port, as shall be
" found most expedient, and for the Good of his Majesty's Service: And such Flag
" Officer or Captain, so directed to hold Courts Martial, shall preside at such Court
" Martial, any Thing herein contained to the contrary notwithstanding."

Sect. 12. " That from and after the 25th *December* 1749, no Court Martial to be held or ap-
" pointed by virtue of this present Act, shall consist of more than Thirteen, or of less than
" Five Persons, *to be composed of such Flag Officers, Captains, or Commanders, then and*
" *there present, as are next in Seniority to the Officer who presides at the Court Martial.*"

Notwithstanding the Words *in Italics* in the Twelfth Section, the Usage at Courts Martial has been for Officers, who have given Evidence at the Trials, not to sit as Members of the Courts, although they were Senior to others who sat, and consequently would have sat as Members, if they had not been examined as Witnesses.

The Lords Commissioners of the Admiralty having lately received a Complaint in Writing, charging an Officer of Rank in the Royal Navy, with one of the Offences specified in the Articles of War, which are created and set forth by the above-mentioned Act of Parliament, their Lordships have therefore thought fit to issue their Order or Warrant in Writing, to Admiral Sir *Thomas Pye*, at *Portsmouth*, requiring him forthwith to assemble a Court Martial for the Trial of the said Officer: And it having been suggested to their Lordships, that several Officers and Commanders of the King's Ships at *Portsmouth* (who on Account of their Seniority must sit as Members of the said Court Martial, if the Letter of the Twelfth Section in the said Act is conformed to) will be summoned as Witnesses either in Support of the Charge, or in Behalf of the Accused:

You are therefore requested to advise their Lordships, Whether in case such Senior Officers should be called upon to give Evidence at the Trial, they may likewise sit as Members of the Court Martial? And also,

Whether the Court can be legally held without the Senior Officers (who shall happen to be called upon to give Evidence), in case it is necessary for their Juniors to sit as Members, in order to make up the Number required by the Statute to constitute a Court?

Opinion.

Kelyng's Rep.
12.

The Usage of the Service is very material upon this Case, for Naval Courts Martial are evidently considered, in the Statutes concerning them, as known and established Courts, consequently, in Matters not specially provided for, the settled Course of Proceeding must have great Weight.—That the Characters of Witness and Judge are not consistent, is very obvious; and though in the Common Law of *England*, there is no Challenge to a Judge, yet in the only Instance we know where Judges were called upon to give Evidence in a criminal Case, it is observed, that they sat no more during that Trial.—By a strict and literal Construction of the Statute of the 22d of *Geo. II.* Ch. 33. Sect. 12. neither the Prosecutor nor the Prisoner would cease to be Judges.

But this Construction would be absurd, and the Act must, from common Sense, admit as the Usage is, That Officers to whom there is a just Ground of Exception, or who have a just Ground of Excuse, shall not be included in the Number of those of whom the Court is to be composed; consequently, if any Officer entitled by his Rank to sit, is either Prosecutor, Party, or Witness, the Person next in Seniority must supply his Place, and the Court so composed will be legally held according to the Intent of the Act.

AL. WEDDERBURN.
JAS. WALLACE.
F. C. CUST.

No. III.

S I R,

Admiralty-Office, Dec. 9, 1778.

SIR *Hugh Palliser*, Vice-Admiral of the Blue Squadron of his Majesty's Fleet, having in his Letter of this Day's Date transmitted to my Lords Commissioners of the Admiralty a Charge of Misconduct and Neglect of Duty against you, on the 27th and 28th of *July* 1778, in divers Instances therein mentioned, and desired that a Court Martial may be held for the trying you for the same; and their Lordships intending that a Court Martial shall be held for that Purpose, I have it in Command from them to send you herewith a Copy of the said Charge, that you may be preparing for your Defence.

I have the Honour to be, S I R,

Your most obedient humble Servant,

PH. STEPHENS.

Honourable Augustus Keppel, Admiral of the Blue, &c.

No. IV.

S I R,

Audley-Square, Dec. 10, 1778.

I HAVE received your Letter of Yesterday's Date, informing me, "That Sir *Hugh Palliser*, Vice-Admiral of the Blue Squadron of his Majesty's Fleet, had, in his Letter of that Day's Date, transmitted to the Lords Commissioners of the Admiralty a Charge of Misconduct and Neglect of Duty against me, on the 27th and 28th of *July* 1778, in divers Instances therein mentioned, and desired that a Court Martial may be held for trying me for the same, and that their Lordships intended that a Court Martial should be held for that Purpose; also enclosing, by Command of their Lordships, a Copy of the said Charge, that I may be preparing for my Defence." I must beg of you to inform their Lordships, that to so very extraordinary a Proceeding I can for the present only say, that I must take some Time for Consideration before I can return any other Answer, than that I have received your Letter.

I am, S I R,

Ph. Stephens, Esq;

Your most obedient and humble Servant,

A. KEPPEL.

No. V.

S I R,

Audley-Square, Thursday Night, Dec. 10, 1778.

THE very extraordinary Contents of your Letter of last Night made it impossible for me on a sudden to make any other Answer, than a bare Acknowledgment of having received it; but it has not required much Time to determine me, in Justice to my own Reputation, to inform you, that I am willing to meet a Court Martial whenever the Board of Admiralty shall think proper to order one.

At the same Time, Sir, I desire you will represent to the Lords Commissioners my utter Astonishment at the Countenance their Lordships have so far given to this Proceeding, as to resolve, on the same Day on which such a Charge is exhibited, to order a Court Martial against the Commander in Chief of the Fleet, on an Attack from an inferior Officer, under all the very peculiar Circumstances in which Sir *Hugh Palliser* now stands.

I am, S I R,

Ph. Stephens, Esq;

Your humble Servant,

A. KEPPEL.



No. VI.

S I R,

Admiralty-Office, 11th Dec. 1778.

I RECEIVED Yesterday Afternoon your Letter of the 10th Instant, acknowledging the Receipt of mine of the 9th, transmitting a Copy of the Charge exhibited against you by Vice-Admiral Sir *Hugh Palliser*, and this Morning I received your Letter, dated last Night, intimating that you are willing to meet a Court Martial whenever the Board of Admiralty shall think proper to order one; and having without Loss of Time laid the same before my Lords Commissioners of the Admiralty, I am commanded by their Lordships to acquaint you, that they propose to order a Court Martial to be assembled on *Thursday* the 7th of *January* next, if you think you shall be ready with your Evidence by that Time; but if not, their Lordships will order it to be held on a later Day.

As to the Astonishment you express at the Countenance you conceive their Lordships have given to this Proceeding by resolving, on the same Day on which the Charge was exhibited, to order a Court Martial, their Lordships command me to acquaint you, that they know of no Instance in which the Board of Admiralty, upon receiving a specific Charge of such a Nature, signed by an Officer of Rank serving under the Party accused, and accompanied with a Request for the assembling a Court Martial thereupon, have delayed coming to a Resolution to order one, nor would they have thought themselves justified, if they had hesitated to take the necessary Steps for bringing the Matter to an early and legal Decision.

I have the Honour to be, S I R,

Your most obedient humble Servant,

Honourable Admiral Keppel, Town.

PH. STEPHENS.

No. VII.

S I R,

Admiralty-Office, 11th Dec. 1778.

I HAVE received, and read to my Lords Commissioners of the Admiralty, your Letter of this Day, informing them, that in regard to the Charge you have exhibited against the Honourable Admiral *Keppel*, and your Desire he may be tried by a Court Martial, you propose to withdraw yourself from attending your Duty at the Board until the Trial shall be over, which their Lordships command me to acquaint you they are pleased to consent to.

I am, &c.

Vice-Admiral Sir Hugh Palliser.

PH. STEPHENS.

No. VIII.

S I R,

Admiralty-Office, 12th Dec. 1778.

HAVING laid before my Lords Commissioners of the Admiralty your Letter of Yesterday's Date, desiring that Captain *Jervis* of the *Foudroyant*, Captain *Marshall* of the *Arethusa*, and Sir *William Burnaby*, Captain of the *Milford*, may not be ordered to Sea till a Court Martial has been held for your intended Trial; and representing that you may have Occasion to call many Officers and Persons belonging to other Ships not ordered to Sea, and that you should be glad to have the Evidence of the Captain and First Lieutenant of his Majesty's late Ship the *Fox*; but that as the Return of those Gentlemen to *England* is very uncertain, you will not on that Account protract the assembling of the Court Martial, I am in return commanded by their Lordships to acquaint you, that in order to comply with your Request respecting the Captains *Jervis*, *Marshall*, and Sir *William Burnaby*, they will appoint other Officers to command their Ships till the Trial is over; that if you will transmit to their Lordships a List of such other Officers and Persons as you may have Occasion to call upon, they will in like Manner appoint others to supply their Places, that you may not be deprived of their Evidence, nor the Public of the Use of the Ships to which they belong; and with respect to the Captain and First Lieutenant of the *Fox*, I am to acquaint you, that their Lordships will take every Method in their Power to have them exchanged, or to obtain Permission for them to come to *England* upon their Parole as soon as possible.

I have the Honour to be, S I R,

Your most obedient humble Servant,

Honourable Admiral Keppel, Town.

PH. STEPHENS.

No. IX.

S I R,

Audley-Square, Dec. 12, 1778.

IN Answer to so much of your Letter of Yesterday, informing me that the Lords Commissioners of the Admiralty propose to order a Court Martial to be assembled on *Thursday* the 7th of *January* next, if I am ready with my Evidence by that Time, you will please to inform their Lordships, I shall be ready to meet the Court Martial by the Time fixed, provided the Evidence mentioned in the List that accompanies this can be assembled by that Time; others that occur to me I shall transmit you the Names of from Time to Time; but I must beg leave to observe, and which you will please to communicate to their Lord-

ships, that the Evidence of the Captain and First Lieutenant of his Majesty's late Ship the *Fox* will be so material to me, I hope, and desire, that effectual Means may be taken to get those Gentlemen to *England* in Time.

I am, S I R,

Your humble Servant,

Ph. Stephens, Esq;

A. KEPPEL.

No. X.

S I R,

Admiralty Office, Dec. 14; 1778.

HAVING laid before my Lords Commissioners of the Admiralty your Letter of the 12th Instant, inclosing a List of Evidence whom you desire to attend the Court Martial which is proposed to be held for your Trial on the 7th of *January* next, as also your Two Letters of this Day's Date, desiring that all the Lieutenants and Warrant Officers (except the Boatwain, Gunner, and Carpenter) who were on board his Majesty's Ship *Foudroyant* the 27th of *July* last, may be kept at Home as necessary Evidences at the said Court Martial; I am commanded by their Lordships to acquaint you that the necessary Directions will be given, that the Evidences above mentioned may be forthcoming.

I have the Honour to be, S I R,

Your most obedient humble Servant,

PH. STEPHENS.

Honourable Augustus Keppel, Admiral of the Blue, &c. Town.

No. XI.

S I R,

Audley Square, 16th Dec. 1778.

MY Counsel having informed me that before they can give me the best Advice in their Power upon the Charge of Sir *Hugh Palliser*, it will be necessary for them to see the whole of my Instructions and Correspondence with you; and that it may be necessary to produce the whole, or Parts of them, at the Court Martial, I desire you will acquaint the Lords Commissioners of the Admiralty therewith.

I am, S I R,

Your humble Servant,

A. KEPPEL.

Ph. Stephens, Esq;

No. XII.

S I R,

Admiralty-Office, 18th Dec. 1778.

I Received and lost no Time in laying before my Lords Commissioners of the Admiralty your Letter of the 16th Instant, respecting the Communication of your Instructions and Correspondence with me to your Counsel, and perhaps to the Court Martial that is to be assembled for your Trial. I was in Hopes I should have been enabled by this Time to have sent you their Lordships Answer thereto; but as the Instructions for which you have called are of a very secret Nature, and were given in pursuance of his Majesty's Commands, signified by one of his principal Secretaries of State, it is necessary their Lordships should receive his Majesty's Commands, before they can with Propriety give you a full Answer to your Letter. Their Lordships are persuaded, in the mean Time, you will not communicate those Instructions to any Person whatsoever, and they command me to assure you, that you shall have their farther Answer with as little Delay as possible.

I am, S I R,

Your most obedient humble Servant,

PH. STEPHENS.

Honourable Admiral Keppel, London.

No. XIII.

S I R,

Admiralty, 19th Dec. 1778.

I Am advised that it will be necessary for me to produce on the Trial of Admiral *Keppel* a List of the *French* Fleet that sailed from *Brest* in the Month of *July* last; I therefore desire you will please to move my Lords Commissioners of the Admiralty, to direct that I may be furnished with such List, according to the best Intelligence that has been received thereof, at the Admiralty.

Also that you will inform their Lordships, that it will be necessary to produce at the Court Martial Admiral *Keppel's* Letter to you, dated the 30th *July* last, giving an Account of the Engagement on the 27th.

I am, S I R,

Your most obedient humble Servant,

HUGH PALLISER.

Philip Stephens, Esq;

[N. B. In a subsequent Letter he desired the Admiral's Journal might be also produced.]

No. XIV.

Admiralty-Office, 21st December, 1778.

S I R,
MY Lords Commissioners of the Admiralty having acquainted Lord Viscount *Weymouth*, his Majesty's principal Secretary of State, with your having been informed by your Counsel, that before they could give you the best Advice in their Power upon the Charge of *Sir Hugh Palliser*, it would be necessary for them to see the whole of your Instructions and Correspondence with this Office; and that it might be necessary to produce the Whole or Parts of them at the Court Martial; and my Lords having at the same Time desired his Lordship to signify his Majesty's Commands with respect thereto, his Lordship has in Return informed them that it is his Majesty's Pleasure they should signify to you, that you must be sensible that there are Parts of your Instructions which cannot be divulged without great Detriment to the State. I am commanded by their Lordships to signify the same to you accordingly, and to inform you in further Answer to your Letter of the 16th Instant, that they cannot consent that the Whole of your said Instructions, and the Correspondence above-mentioned, should be laid before your Counsel, or be produced at the Court Martial; but if you will point out any Parts of the said Instructions or Correspondence, which in your Opinion have any Relation to the Operations of the Fleet on the 27th and 28th of *July* last, you will be permitted to make use of them in the Manner you desire, if there shall appear to be no Objections of the Nature above mentioned. I have the Honour to be, with great Regard,

S I R,

Your most obedient humble Servant,

Honourable Augustus Keppel.

PH. STEPHENS.

No. XV.

Audley-Square, December 23, 1778.

S I R,
I HAVE received your Letter of the 21st Instant, in which you inform me that the Lords Commissioners of the Admiralty had acquainted Lord *Weymouth*, one of his Majesty's principal Secretaries of State, with the Contents of my Letter to you of the 16th. That his Lordship has in Return informed them, "That it is his Majesty's Pleasure they should signify to me that I must be sensible there are many Parts of my Instructions which cannot be divulged without great Detriment to the State, and that the Lords Commissioners of the Admiralty had ordered you to inform me, that they cannot consent that the Whole of my Instructions and Correspondence with you should be laid before my Counsel, or be produced at the Court Martial; but that if I will point out any Part of the said Instructions or Correspondence which in my Opinion has any Relation to the Operation of the Fleet on the 27th and 28th of *July* last, I shall be permitted to make use of them in the Manner I desire, if there be no Objection of the Nature above mentioned."

I am also to acknowledge the Receipt of your Letter of the 18th, in which you informed me, "That it was necessary their Lordships should receive his Majesty's farther Commands, before they could with Propriety give me a full Answer to my Letter; and that their Lordships were persuaded that in the mean time I would not communicate those Instructions to any Person whatsoever." In Answer to which, I must desire you will acquaint their Lordships, that I neither have made, nor will make any unnecessary Communications of my Instructions, nor are even my Counsel yet apprised of any Part of them. But in Answer to your Letter of the 21st, I must beg of you to inform their Lordships that they have totally misunderstood my Letter of the 16th, if they imagined that, when put upon my Trial for the Defence of my Life and Honour, I could think of asking any Permission to produce before the Court which is to try me, any Circumstances which in my own Opinion, or that of my Counsel, may in any Degree be useful for my Defence. No, Sir; my Letter of the 16th was not to ask Leave to do what by every Rule of Justice is my Right. In respect to the last Paragraph of your Letter of the 21st Instant, "That if I will point out any Part of such Instructions or Correspondence which in my Opinion has any Relation to the Operations of the Fleet on the 27th and 28th of *July* last, I shall be permitted to make use of them in the Manner I desire, if there shall appear no Objections of the Nature above mentioned;" I can only say, that I conceive that my Instructions, and every Part of them, must necessarily have Relation to the Operation of the Fleet on the 27th and 28th of *July* last, and on every Day it was under my Command, and that I was acting under those Instructions. As to my pointing out the particular Parts that I conceive may be most useful to me, and opening my Defence to that Board of whose Conduct towards me in this Business I have Reason to complain, where the Accusations against me originated, and where my Accuser has a Seat, it cannot on Reflection be expected; nor can I believe their Lordships intend, that when

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they

they put me on my Trial that they are to limit me by their Discretion in the Use of such Means as I may think expedient for my Defence, and that they propose to distress me by such an Alternative as that I must necessarily (according to their Statement) either bring Detriment on the State, or Prejudice to my own Justification.

I am, S I R,

Your very humble Servant,

Philip Stephens, Esq;

A. KEPPEL.

No. XVI.

S I R,

Audley-Square, 24th Dec. 1778.

THE Evidence of Captain *Windsor*, and of the First Lieutenant of his Majesty's late Ship the *Fox*, I consider so material at the Court Martial to be held for my Trial on the 7th of next Month, that I cannot help troubling you again on that Head, and to beg to be informed whether such Steps have been taken, as to insure their Arrival in England in Time.

At present, it does not occur to me that I shall have Occasion to call for the Evidence of any of the Officers of the *Monarch*, and therefore will not wish any of them to be detained from the Service they are going upon.

I am, S I R,

Your humble servant,

Philip Stephens, Esq.

A. KEPPEL.

No. XVII.

S I R,

Admiralty-Office, 24th Dec. 1778.

HAVING received and read to my Lords Commissioners of the Admiralty your Letter of this Day, desiring to be acquainted with the Steps which their Lordships have taken to insure the Arrival of Captain *Windsor*, and the First Lieutenant of the *Fox*, in Time to give Evidence on your Trial on the 7th of next Month; in Return, I am commanded by their Lordships to acquaint you, in Addition to what is mentioned in the Letter I had the Honour to write you on the 12th Instant, concerning these Witnesses, that their Lordships, on the same Day, desired Lord *Weymouth*, one of his Majesty's principal Secretaries of State, to take such Measures as should appear to him to be proper for procuring their Appearance at the Time aforementioned; and I am now further to inform you, it is not their Lordships Intention that the Court shall sit until the Effect of the aforementioned Application is known. Their Lordships observe what is mentioned in your aforementioned Letter, about excusing the Attendance of the Officers of the *Monarch*.

I am, S I R,

Your most obedient, humble Servant,

Honourable Admiral Keppel.

PH. STEPHENS.

No. XVIII.

S I R,

Admiralty Office, 24th Dec. 1778.

I Have received and read to my Lords Commissioners of the Admiralty your Letter of the 19th Instant, and am commanded by their Lordships to acquaint you, that they will, agreeable to your Desire, order a Clerk to attend at the ensuing Court Martial, with Admiral *Keppel's* Letter of the 30th July, giving an Account of his Engagement with the *French* Fleet on the 27th. With respect to the other Part of your Letter, requesting to be furnished with a List of the *French* Fleet, which sailed from *Brest* in the Month aforementioned, their Lordships further command me to observe, they have not a List which they can authenticate.

I am, &c.

Vice-Admiral Sir Hugh Palliser.

PH. STEPHENS.

No. XIX.

S I R,

Audley-Square, Dec. 26, 1778.

I Received Yesterday your Letter of the 24th, in Answer to mine to you of the same Day, informing me that in Addition to what is mentioned in your Letter of the 12th Instant, concerning the Attendance of Captain *Windsor*, and the First Lieutenant of his Majesty's late Ship the *Fox*, at the Court Martial to be held for my Trial on the 7th of next Month, that their Lordships, on the same Day, desired Lord *Weymouth*, one of his Majesty's principal Secretaries of State, to take such Measures as should appear to him to be proper for procuring their Appearance at the Time afore-mentioned; and further to inform me, it is not their Lordships Intention that the Court shall sit until the Effect of the afore-mentioned Application is known.

This

This Information leads me to apprehend a Possibility of the Enquiry being put off, and any Delay, I much fear, will be productive of serious Detriment to my Country, in detaining so many other Officers from the public Service.—From this Consideration, though I remain of Opinion, that the Evidence of Captain *Windsor* and of his Lieutenant may be material at the Trial, I must repeat what I wrote to you in my Letter of the 11th Instant, that from the Uncertainty of the Return of those Gentlemen to *England*, it is my Wish not to have the Court Martial put off on that Account.

I am, SIR,

Pb. Stephens, Esq;

Your humble Servant,

A. KEPPEL.

No. XX.

SIR,

Admiralty-Office, 27th Dec. 1778.

HAVING laid before my Lords Commissioners of the Admiralty your Letter of the 23d Instant, their Lordships, in Answer to that Part of it which relates to the Accusation against you, command me to inform you that the Accusation did not originate from their Board, but from Sir *Hugh Palliser*, whose Attendance there, has been dispensed with ever since.

Their Lordships having already communicated to you his Majesty's Pleasure with regard to your Secret Instructions, cannot think it necessary to say any Thing further to you upon that Subject.

I have the Honour to be, SIR,

Your most obedient, humble servant,

PH. STEPHENS.

Honourable Augustus Keppel, Admiral of the Blue, &c.

No. XXI.

SIR,

Admiralty-Office, 29th Dec. 1778.

I HAVE laid before my Lords Commissioners of the Admiralty your Letter of the 26th Instant, expressing your Apprehensions that the Enquiry into your Conduct may be put off, on account of the Non-attendance of Captain *Windsor* and Lieutenant *Bertie*, of his Majesty's late Ship the *Fox*, which you fear may be productive of serious Detriment to your Country, by detaining so many other Officers from the public Service, and therefore repeating what you had written in a former Letter, that, from the Uncertainty of the Return of those Gentlemen to *England*, it is your Wish not to have the Court-Martial put off on that Account. I am commanded by their Lordships to acquaint you, that in consequence thereof, the Court Martial will be ordered to be held on the 7th of next Month.

I am, SIR,

Your most obedient, humble Servant,

PH. STEPHENS.

Honourable Admiral Keppel.

No. XXII.

SIR,

Admiralty, 29th December, 1778.

I DESIRE you will move my Lords Commissioners of the Admiralty to give me an Order before Admiral *Keppel's* Trial comes on, to strike my Flag, and come on Shore.

I am, SIR,

Your most obedient humble Servant,

HUGH PALLISER.

Philip Stephens, Esq;

No. XXIII.

By the Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland, &c.

WHEREAS by our Order of this Day's Date, we have directed Sir *Thomas Pye*, Admiral of the White, and Commander in Chief of his Majesty's Ships and Vessels at *Portsmouth* and *Spithead*, to assemble a Court-Martial on *Thursday* the 7th Day of next Month, to enquire into what is set forth in the Charge which has been exhibited against you by Vice-Admiral Sir *Hugh Palliser*, and to try you for the same, provided the Witnesses on your Part and his shall then be ready, or if not, as soon afterwards as they shall be so; and whereas we have therefore thought it fitting, that you shall be suspended from your Employment as Commander in Chief of a Squadron of his Majesty's Ships employed and to be employed in the Channel, Soundings, or wherever else his Majesty's Service shall require; you are hereby suspended from your said Employment accordingly.

Given under our Hands the 31st December 1778.

*To the Honourable Augustus Keppel,
Admiral of the Blue, &c.*

SANDWICH,
J. BULLER,
LISBURN.

By Command of their Lordships,

XXIV.

S I R, *Admiralty-Office, Jan. 1, 1779.*
MY Lords Commissioners of the Admiralty having, by their Order of Yesterday's Date, directed Vice-Admiral Sir *Hugh Palliser* to strike his Flag and come on Shore; I am commanded by their Lordships to acquaint you therewith, and have the Honour to be,

S I R,

Your most humble Servant,

PH. STEPHENS.

Honourable Augustus Keppel, Admiral of the Blue, &c.

No. XXV.

S I R, *Audley-Square, 2d Jan. 1779.*
I AM unwilling to produce any Inconvenience to the public Service, by desiring the Earl of *Sandwich* to attend the whole of my Trial, which will probably run into great Length. At the same Time, I conceive his Lordship may be a material Witness for me when I come to my Defence; I therefore desire you will give him Notice, that I desire his Attendance at the said Trial, and that he will produce, on that Occasion, all and every such Letter and Letters as were written to him by Vice-Admiral Sir *Hugh Palliser*, from the 27th of *July* to the Time of my Sailing from *Plymouth* the 23d of *August* last, that such may be called for as I may judge material.—I send this Notice before the Commencement of the Trial, that no Objections may be taken on that Account; but, as I intimated before, I don't wish that Lord *Sandwich* should be detained at *Portsmouth* any longer than is necessary, and therefore I shall give him timely Notice before I shall want to call him.

I am, S I R,

Your very humble Servant,

A. KEPPEL.

Philip Stephens, Esq.

No. XXVI.

By the Commissioners for executing the Office of Lord High Admiral of Great Britain and Ireland, &c.

WHEREAS we have issued our Order to Sir *Thomas Pye*, Admiral of the White Squadron of his Majesty's Fleet, to hold a Court Martial at *Portsmouth*, on *Thursday* next the 7th of this Month, for the Trial of the Honourable *Augustus Keppel*, Admiral of the Blue Squadron of his Majesty's Fleet, upon a Charge exhibited against him by Vice-Admiral Sir *Hugh Palliser* for Misconduct and Neglect of Duty on the 27th and 28th of *July* last, in sundry Instances therein mentioned; and whereas we think proper that you should take the said Admiral, the Honourable *Augustus Keppel* into your Custody, and attend him to and from the said Court, you are hereby required and directed to repair to Admiral *Keppel* and acquaint him therewith; but as it is not our Intention that he should be put under any greater Inconvenience or Confinement than is absolutely necessary, you are to take his Honour for his Appearance at *Portsmouth* on or before the said 7th Day of this Month, and on his Arrival attend him to and from the Court during the Continuance of his Trial, and then to dispose of him as the Court Martial shall direct. For which this shall be your Warrant. Given under our Hands, and the Seal of the Office of Admiralty, the 1st of *January* 1779.

To William Brough, Esq; Marshal of the High Court of Admiralty, or his Deputy.

SANDWICH.

J. BULLER.

LISBURN.

By Command of their Lordships,

PH. STEPHENS.

No. XXVII.

S I R, *Audley-Square, 2d Jan. 1776.*
THE Provost Marshal, who was directed by the Lords Commissioners of the Admiralty to take me into his Custody, informed me that, as their Lordships do not mean to give me unnecessary Trouble, he was permitted to take my Word of Honour for my Appearance at *Portsmouth* on the 7th of this Month; I have given him my Word of Honour accordingly, and am this Day setting out upon my Journey thither, of which I desire you will inform their Lordships—

And likewise that you will acquaint them, I beg to be informed whether the Flag Officers of the Fleet who were commanding at the Nore, in the *Downs*, and at *Plymouth*, at the Time their Lordships received the Charge against me, have all of them been chosen by their Lordships to be at *Portsmouth*, in a Situation to set at my Trial.

I am, S I R,

Your very humble Servant,

A. KEPPEL.

Ph. Stephens, Esq;

No XXVIII.

S I R,

Admiralty-Office, 4th Jan. 1779.

I THIS Afternoon received, by the Hands of Mr. Moore, your Letter of the 2d Instant, desiring me to give the Earl of *Sandwich* Notice, that you desire his Attendance at your Trial; and that he will produce, on that Occasion, all and every such Letter and Letters as were written to him by Vice-Admiral Sir *Hugh Palliser* from the 27th of *July* to the Time of your Sailing from *Plymouth* the 23d of *August* last, that such may be called for as you may judge material; and in Return, I am to acquaint you, that I immediately communicated the same to his Lordship.

I am, S I R,

Your most obedient, and most humble Servant,

PH. STEPHENS.

Honourable Augustus Keppel, Admiral of the Blue, &c.

No. XXIX.

S I R,

Portsmouth, 4th Jan. 1779.

I MADE an early Application to the Lords Commissioners of the Admiralty after being acquainted by Mr. Secretary *Stephens*, that their Lordships intended that a Court Martial should be held for trying me on a Charge of Misconduct and Neglect of Duty on the 27th and 28th of *July* last, exhibited against me by Vice-Admiral Sir *Hugh Palliser*, that the Captains of the King's Ships serving in the Fleet under my Command on the 27th of *July* might be summoned, and likewise other Officers.

And since, having Notice given me that the Court Martial is ordered to be assembled for my Trial on *Thursday* the 7th Instant, and that you are to act in your Office of Judge-Advocate at the said Trial; I therefore think it proper to acquaint you, that I desire the Witnesses whose Names are inserted in the List that accompanies this, may be summoned to attend to give their Evidence before the Court; others that occur to me, that I may have Occasion to call for, I will transmit you their Names in Time, as I may judge their Evidence material and necessary.

You will observe in the List of Witnesses, the Names of the Honourable Captain *Windsor* and Lieutenant *Bertie*, late of his Majesty's Ship the *Fox*. Mr. Secretary *Stephens* has acquainted me, in consequence of my Application to the Lords Commissioners of the Admiralty, that they have desired Lord *Weymouth*, one of his Majesty's Principal Secretaries of State, to take such Measures as should appear to him to be proper for procuring their Appearance at my Trial. Though the Evidence of those Gentlemen may be material, I have informed their Lordships, through Mr. *Stephens*, that should they not arrive by the Day fixed for the assembling the Court Martial, I do not desire it may be put off on that Account; however, I shall be glad to know from you, Sir, the Result of the Measures taken for their Return to *England*, and if they are likely to be here by the 7th Instant.

I beg likewise to be informed if there is any Objection to the Captains sitting as Members of the Court Martial to be held for my Trial who have been summoned as Witnesses, either by me or Vice-Admiral Sir *Hugh Palliser*.

I am, S I R,

Your very humble Servant,

George Jackson, Esq; Judge Advocate.

A. KEPPEL.

No. XXX.

S I R,

Portsmouth, 5th Jan. 1779.

I HAD the Honour of your Letter of Yesterday, inclosing a List of the Names of Witnesses, whom you desire may be summoned to give Evidence on your Trial; and shall not fail to issue the necessary Notices.

I could not, upon the Questions you are pleased to put to me, respecting the Return to *England* of Captain *Windsor* and Lieutenant *Bertie*, avoid referring myself to the Secretary of the Admiralty for Information.

I was sat down to inform you I had taken that Step, when, luckily, I received by a Messenger, a Letter from him, in which he acquaints me, that those Gentlemen are already arrived.

With regard to your other Question, whether Witnesses may sit as Members of the Court Martial; not conceiving myself fully competent in that Matter, I beg to reserve myself

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myself till I have seen and talked with the President, which I shall endeavour to do as early this Morning as I possibly can.

I am, with Regard and Consideration,

S I R,

Your most faithful and most obedient Servant,

GEO. JACKSON.

Honourable Admiral Keppel, &c. &c.

No. XXXI.

S I R,

Portsmouth, 4th January, 1779.

PREVIOUS to my leaving London, I wrote to Mr. Secretary Stephens *, desiring that the Earl of Sandwich might have Notice to attend at my Trial, a Copy of which Letter I herewith transmit you, for your Information, and must desire you will apprise his Lordship of my Intention in respect to him.

I am, S I R,

Your very humble Servant,

A. KEPPEL.

Geo. Jackson, Esq; Judge-Advocate.

* See the Admiral's Letter, dated the 2d Instant.

No. XXXII.

S I R,

Portsmouth, 5th January, 1779.

I AM to acknowledge the Receipt of the Letter you yesterday honoured me with, inclosing a Copy of one you had written to the Secretary of the Admiralty, desiring that the Earl of Sandwich might have Notice to attend at your Trial; and take Leave to acquaint you in Return, that I last Night wrote to his Lordship to apprise him of your Intention, agreeable to the Request made in your said Letter.

I am, with Regard and Consideration,

S I R,

Your most faithful and most obedient Servant,

GEO. JACKSON.

Honourable Admiral Keppel, &c. &c.

No. XXXIII.

S I R,

Admiralty-Office, 4th January, 1779.

I HAVE communicated to my Lords Commissioners of the Admiralty your Letter of the 2d Instant, acquainting them, that you have given your Word of Honour to the Provost Marshal to be at Portsmouth on the 7th Instant, at the Court Martial to be held for your Trial; you was about to set out for that Place, and desiring to be informed, whether the Flag Officers who were commanding at the Nore, in the Downs, and at Plymouth, at the same Time their Lordships received the Charge against you, have all of them been chosen by their Lordships to be at Portsmouth in a Situation to sit at your Trial; and I am in Return to acquaint you, that their Lordships have ordered the Flag Officers who were commanding at the above-mentioned Places, at the Time they received the Charge against you, to repair immediately to Portsmouth, and hoist their Flags.

I have the Honour to be, S I R,

Your most obedient humble Servant,

PH. STEPHENS.

Honourable Admiral Keppel, Portsmouth.

No. XXXIV.

S I R,

Admiralty-Office, 5th January, 1779.

HAVING laid before my Lords Commissioners of the Admiralty a Letter from Mr. Josb. Sharpe, dated the 1st Instant, desiring, on your Behalf, and as your Agent, that all the Letters written by you to me, as Secretary of the Admiralty, from the Time when you received your first Instructions to the Date of his said Letter, may be produced at your Trial, in order that such of them may be produced in Evidence as you may think fit to call for; I have, in Obedience to their Lordships Commands, ordered Mr. Robinson, one of my Clerks, to attend at Portsmouth, on the 7th Instant, with the said Letters, accompanied with a Schedule thereof, attested by me.

I am, with great Regard, S I R,

Your most obedient humble Servant,

PH. STEPHENS.

Honourable Augustus Keppel, Admiral of the Blue, Portsmouth.

No. XXXV.

S I R,

Portsmouth, 6th January, 1779.

I N Consequence of what you this Morning recommended, I have waited on Admiral Keppel, and on Sir Hugh Palliser, and acquainted them of your Intention to be on board the *Britannia* To-morrow Morning at Ten o'Clock, in order to the constituting the Court, to which neither of them had any Objection.

I took the same Opportunity of reading to both, the Opinion of the Attorney and Solicitor General, and of the Counsel for the Affairs of the Admiralty, respecting the Eligibility of Officers, summoned as Witnesses, to sit as Members of the Court.

I am, with great Regard, S I R,

Your most faithful and obedient Servant,

Sir Thomas Pye, Admiral, &c. &c. &c.

GEO. JACKSON.

No. XXXVI.

S I R,

Portsmouth, 6th Jan. 1779.

Y OU having, by the Approbation of Admiral Sir Thomas Pye, acquainted me with the Opinion given, relative to Officers summoned as Evidences on Courts Martial being eligible to sit as Members, I desire you will please to furnish me with a Copy of the said Case and Opinion given thereon, if you see no Impropriety in it.

I likewise request to be furnished with a List of the Witnesses, summoned by Desire of Admiral Keppel.

I am, S I R, your most obedient Servant,

George Jackson, Esq; Judge Advocate.

HUGH PALLISER.

No. XXXVII.

S I R,

Portsmouth, 6th Jan. 1779.

I CONCEIVE no Impropriety in furnishing you with a Copy of the Case and Opinion relative to Officers, summoned as Witnesses, sitting as Members of the Court; therefore, agreeable to the Request in the Letter you have just now honoured me with, have the Pleasure to inclose the Copy in this.

Before I can furnish you with a Copy of the List of Witnesses, summoned by Desire of Admiral Keppel, I beg to ask that Gentleman if he has any Objection.—If he has no Objection, I will then transmit to each a Copy of the other's List.

I should not omit to observe, that having given you a Copy of the aforementioned Case and Opinion, I have thought it requisite I should do the same to Mr. Keppel.

I have the Honour to be, with great Respect, S I R,

Your most obedient and faithful Servant,

Sir Pugh Palliser, Bart. &c.

GEO. JACKSON.

No. XXXVIII.

S I R,

Portsmouth, 6th January, 1779.

H AVING received a Letter from Sir Hugh Palliser, requesting a Copy of the Case and Opinion, which I had the Honour to read to you this Morning, and afterwards to him, relative to Officers summoned as Witnesses, sitting as Members of the Court Martial, if I should see no Impropriety in it—Not conceiving his Request to be liable to any Objection, I have complied with it, and herewith take the Liberty to send you a Copy also.

He has further desired to be furnished with a Copy of the List of Witnesses, summoned by your Desire. But before I can comply, I must beg to know, if you have any Objection. If you have no Objection, I shall then transmit to each a Copy of the other's List.

I am, with great Consideration, S I R,

Your most faithful and obedient Servant,

Honourable Admiral Keppel, &c. &c.

GEO. JACKSON.

No. XXXIX.

S I R,

Portsmouth, 6th January, 1779.

I N Answer to your Letter, proposing an Exchange of Lists of Witnesses with Sir Hugh Palliser, I have only to remind you of what I said to you this Morning, that I was determined to avoid any Degree of Intercourse with that Gentleman: I therefore beg to decline saying any Thing on the Subject.

I am, S I R,

Your very humble Servant,

George Jackson, Esq; Judge Advocate.

A. KEPPEL.

No. XL.

S I R, *Portsmouth, 6th January, 1779.*
IN the Course of the Trial of Admiral *Keppel*, I shall find it necessary to call for all the Letters that Lord *Sandwich* received from Admiral *Keppel*, containing any Account of, or relative to the Engagement on the 27th *July* last, of which I desire you will please to give his Lordship Notice.

I am, S I R,
Your most obedient humble Servant,
Philip Stephens, Esq; HUGH PALLISER.

No. XLI.

S I R, *Portsmouth, 7th January, 1779.*
MR. *Keppel* having declined an Exchange of Lists of Witnesses, you will, therefore, I hope, excuse me in not transmitting you a Copy of his List.

I am, with Respect, S I R,
Your most faithful and obedient Servant,
Sir Hugh Palliser, Bart. &c. GEO. JACKSON.

No. XLII.

S I R, *Portsmouth, 7th January, 1779.*
A BOX is brought to me from the Admiralty, by One of the Clerks, in which are all the Letters you wrote to Mr. *Stephens*, from the Time you received your first Instructions, to the First of *January*, 1779.—They have been sent, I understand, in Consequence of an Application made to the Lords of the Admiralty by Mr. *Sharpe*, your Agent.

I beg to inclose a Schedule of all the aforementioned Letters for your Information,
And am, &c.
Honourable Admiral Keppel, &c. GEO. JACKSON.
[Another Schedule was at the same Time sent to Sir *Hugh Palliser*.]

No. XLIII.

S I R, *Court-room, Portsmouth, 18th January, 1779.*
REAR Admiral *Roddam*, One of the Members of the Court, having been taken ill last Night, and continuing much indisposed, which will prevent his doing Business To-day, the Court have, therefore, thought it adviseable to adjourn; and it stands adjourned till To-morrow Morning, at Ten o'Clock, accordingly.

I am, with regard, S I R, &c. &c.
The Honourable Admiral Keppel, &c. &c. GEO. JACKSON.

[The same Notice was given to Vice-Admiral Sir *Hugh Palliser*.]

No. XLIV.

S I R, *Portsmouth, 18th January, 1779.*
I AM extremely sorry for Rear Admiral *Roddam*'s Indisposition, which in the Judgment of the Court makes a Sitting to adjourn necessary—I only submit to the Wisdom of the Court, whether it is not adviseable that I should be present when the Court assembles and adjourns; because in a Case of criminal Prosecution it may be objected, that nothing ought to be done in the Absence of the Prisoner. If this should be the Opinion of the Court, I am ready and desirous to attend them immediately.

I am, S I R, your very humble Servant,
To the Judge Advocate. A. KEPPEL.

[The Court had been regularly assembled, in order for the Adjournment, and the Question was put and agreed to, as in the Proceedings on other Days.]

No. XLV.

S I R,
ADMIRAL Keppel begs to know if you are possessed of any authentic Copies of Mr. Secretary Stephens's Letters to him that he may find Occasion to call for?—or whether, if he produces the original ones he has in his Possession, they will be deemed authentic without some Person to prove Mr. Stephens's Signature?

30th Jan. 1779.

I am, S I R,

Your most obedient and very humble Servant,

GEO. ROGERS.

Geo. Jackson, Esq; Judge Advocate.

No. XLVI.

S I R,
I Am not possessed of any authentic Copies of Mr. Stephens's Letters to Admiral Keppel; but if the Admiral produces the Originals, I do not conceive there can be any Objection to their being admitted as such. But should any Difficulty arise about the Signature, it will be easy to prove the same, by those who have seen him sign his Name. I imagine my Declaration would be sufficient to the Purpose, to which I should not refuse my Oath, if required, that I deem the Letters to be Original.

Court-Room, 30th Jan. 1779.

I say thus much, wishing to remove every Difficulty in my Power, that might otherwise tend to delay the Admiral's Proceedings.

I am, S I R,

Your most obedient Servant,

GEO. JACKSON.

Geo. Rogers, Esq; Secretary to Admiral Keppel.

No. XLVII.

S I R,
I Received last Night by a Messenger an Order from the Lords Commissioners of the Admiralty, dated Yesterday, setting forth, that whereas the Judge Advocate of his Majesty's Fleet had, in a Letter of the 11th Instant, transmitted to their Lordships the Sentence of the Court Martial, which has been held at *Portsmouth* for my Trial, upon a Charge exhibited against me by Vice-Admiral Sir *Hugh Palliser*; by which Sentence I am unanimously and honourably acquitted of the several Articles contained in the said Charge; and that they do therefore thereby take off the Suspension under which I was laid by their Lordships Order of the 31st of *December* last, and directing and requiring me to hoist my Flag on board his Majesty's Ship *Victory*, and to resume the Employment of Commander in Chief of a Squadron of his Majesty's Ships employed and to be employed in the Channel, Soundings, or wherever else his Majesty's Service may require. I have in consequence ordered Captain *Faulknor* to cause my Flag to be hoisted this Morning on board the *Victory*, and have resumed the Command of such Ships of the Squadron that were under my Orders, now at *Spithead* and in *Portsmouth* Harbour, that are not under any particular Directions from their Lordships.—I received by the same Messenger your Letter signifying that their Lordships are pleased to give me Leave of Absence from my Duty, to attend my private Affairs, and likewise another Letter of the same Date.

Portsmouth, 13th Feb. 1779.

I am, S I R,

Your most obedient and very humble Servant,

A. KEPPEL.

Ph. Stephens, Esq;

L I N E O F B A T T L E,						
The MONARCH to lead with the Starboard, and the RAMILLIES with the Larboard Tacks on board.						
Frigates, &c.	Rate.	Ships.	Commanders.	Guns.	Men.	Division.
Fox,	3	Monarch,	Captain Rowley,	74	600	Vice-Admiral of the Red.
		Hector,	Sir John Hamilton, Bart.	74	600	
		Centaur,	Captain Cosby,	74	600	
		Exeter,	Captain Nott,	64	500	
	2	Duke,	Captain Brereton,	90	750	
		Queen,	Sir Robert Harland, Bart.	90	772	
			Captain Prescott,	90	772	
	3	Shrewsbury,	Captain Ross,	74	600	
		Cumberland,	Captain Peyton,	74	600	
		Berwick,	Hon. Keith Stewart,	74	600	
Arethusa, { to repeat Signals,		Stirling Castle,	Sir Charles Douglas, Bart.	64	500	Admiral of the Blue, and Com- mander in Chief, &c.
		Courageux,	Right Hon. Lord Mulgrave,	74	600	
		Thunderer,	Hon. Captain Walsingham,	74	600	
		Vigilant,	Captain Kingsmill,	64	500	
	2	Sandwich,	Captain Edwards,	90	750	
	3	Valiant,	Hon. Capt. Leveson Gower,	74	650	
			Hon. AUGUSTUS KEPPEL,			
	1	Victory,	Rear-Admiral Campbell,	100	894	
			1st Capt. to the Admiral,			
Proserpine, Vulcan, } Fire-ships Pluto, }			Captain Faulkner,			
	3	Foudroyant,	Captain Jervis,	80	650	
	2	Prince George,	Sir John Lindsay, K. B.	90	750	
	3	Bienfaisant,	Captain Macbride,	64	500	
		Vengeance,	Captain Clements,	74	600	
Milford,						Vice-Admiral of the Blue.
		Worcester,	Captain Robinson,	64	500	
		Elizabeth,	Hon. Captain Maitland,	74	600	
		Defiance,	Captain Goodall,	64	500	
		Robust,	Captain Hood,	74	600	
	2	Formidable,	Sir Hugh Palliser, Bart.	90	772	
			Captain Bazeley,	90	772	
		Ocean,	Captain Laforey,	90	750	
	3	America,	Right Hon. Lord Longford,	64	500	
		Terrible,	Sir Richard Bickerton, Bart.	74	600	
		Egmont,	Captain Allen,	74	600	
		Ramillies,	Captain Digby,	74	600	

(A Copy)

GEO. JACKSON, Ju. Adv.

Order of Battle, 27th July, 1778.

A. KEPPEL.

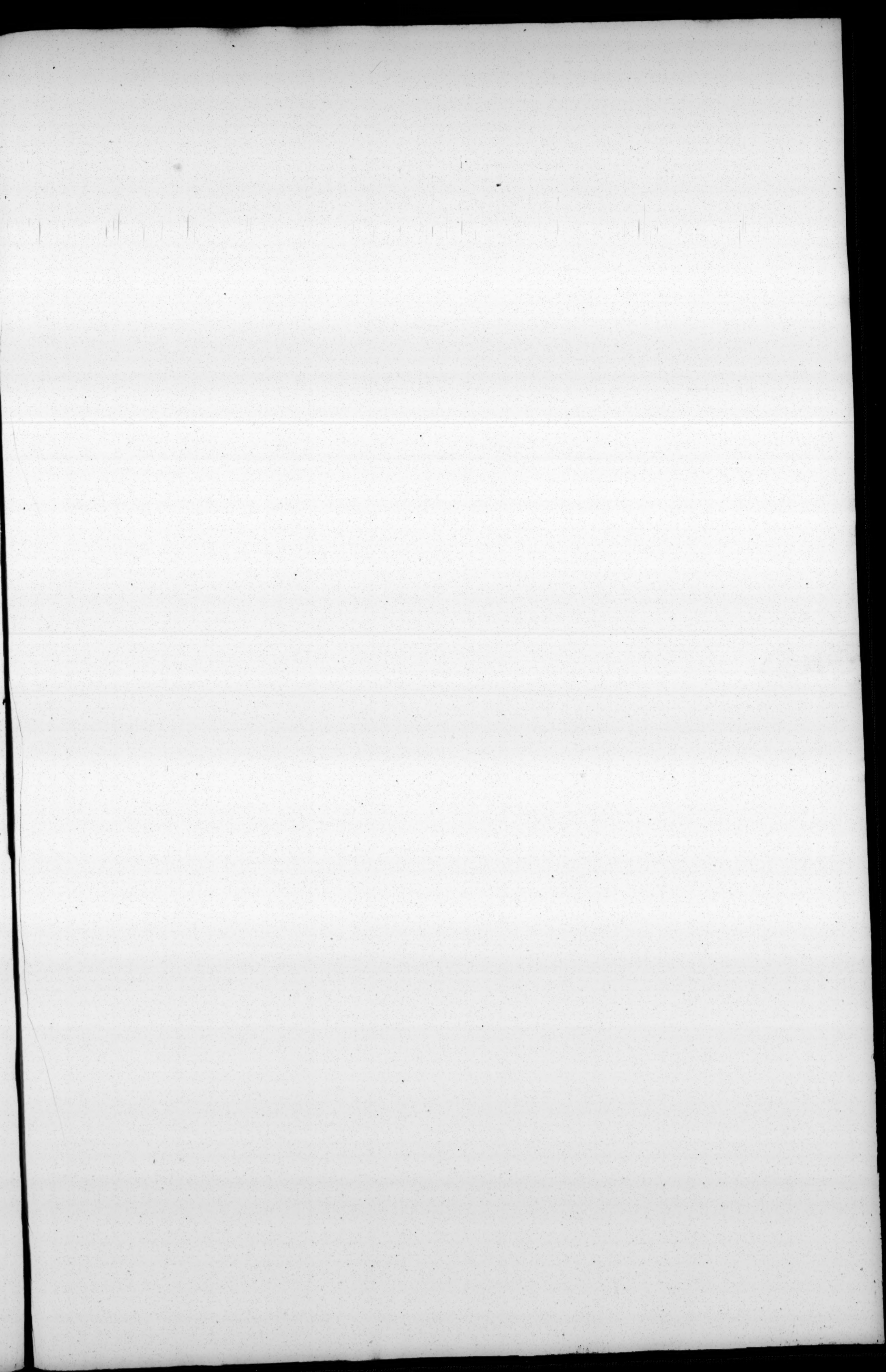
No. XLIX.

The undermentioned is a List of the Ships (exclusive of Frigates) supposed to have failed from *Brest* on the 8th of July, under the Command of Count *d'Orvilliers*, Commander in Chief.—
Two of them were separated from the Fleet before the Action of the 27th July.

	Guns.		Guns.
La Bretagne,	110	Le Dauphine Royal,	74
La Couronne,	80	L' Artésien,	64
Le St. Esprit,	80	Le Bien Aimé,	74
Le Ville de Paris,	90	Le Solitaire,	64
Le Duc de Bourgogne,	80	Le St. Michel,	64
Le Robuste,	74	L' Alexandre,	64
L' Orient,	74	Le Vangeur,	64
Le Glorieux,	74	L' Actionnaire,	64
Le Conquérant,	74	L' Indien,	64
Le Fendant,	74	Le Réfléchi,	64
Le Magnifique,	74	Le Rolland,	64
Le Palmier,	74	Le Sphinx,	64
L' Intrépide,	74	L' Amphien,	50
L' Adif,	74	L' Eveillé,	64
Le Zodiac,	74	Le Triton,	64
Le Diademe,	74	Le Fier,	50

F I N I S.





L I N E O F B A T T L E,

The MONARCH to lead with the Starboard, and the RAMILLIES with the Larboard Tacks on board.

Frigates, &c.	Rate.	Ships.	Commanders.	Guns.	Men.	Division.
Fox,	3	Monarch,	Captain Rowley,	74	600	Vice-Admiral of the Red.
		Hector,	Sir John Hamilton, Bart.	74	600	
		Centaur,	Captain Cosby,	74	600	
		Exeter,	Captain Nott,	64	500	
	2	Duke,	Captain Brereton,	90	750	
		Queen,	Sir Robert Harland, Bart.	90	772	
			Captain Prescott,	90	772	
	3	Shrewsbury,	Captain Ross,	74	600	
		Cumberland,	Captain Peyton,	74	600	
		Berwick,	Hon. Keith Stewart,	74	600	
Arethusa, { to repeat Signals, }		Stirling Castle,	Sir Charles Douglas, Bart.	64	500	{ Admiral of the Blue, and Com- mander in Chief, &c.
		Courageux,	Right Hon. Lord Mulgrave,	74	600	
		Thunderer,	Hon. Captain Walsingham,	74	600	
		Vigilant,	Captain Kingsmill,	64	500	
	2	Sandwich,	Captain Edwards,	90	750	
	3	Valiant,	Hon. Capt. Leveson Gower,	74	650	
			Hon. AUGUSTUS KEPPEL,			
	1	Victory,	Rear-Admiral Campbell,	100	894	
			1st Capt. to the Admiral,			
Proserpine, Vulcan, } Fire-ships Pluto, }			Captain Faulkner,			
	3	Foudroyant,	Captain Jervis,	80	650	
	2	Prince George,	Sir John Lindsay, K. B.	90	750	
	3	Bienfaissant,	Captain Macbride,	64	500	
		Vengeance,	Captain Clements,	74	600	
Milford,						Vice-Admiral of the Blue.
		Worcester,	Captain Robinson,	64	500	
		Elizabeth,	Hon. Captain Maitland,	74	600	
		Defiance,	Captain Goodall,	64	500	
		Robust,	Captain Hood,	74	600	
	2	Formidable,	Sir Hugh Palliser, Bart.	90	772	
			Captain Bazeley,	90	772	
	3	Ocean,	Captain Laforey,	90	750	
		America,	Right Hon. Lord Longford,	64	500	
		Terrible,	Sir Richard Bickerton, Bart.	74	600	
		Egmont,	Captain Allen,	74	600	
		Ramillies,	Captain Digby,	74	600	

(A Copy)

GEO. JACKSON, Ju. Adv.

Order of Battle, 27th July, 1778.

A. KEPPEL.

No. XLIX.

The undermentioned is a List of the Ships (exclusive of Frigates) supposed to have sailed from Brest on the 8th of July, under the Command of Count d'Orvilliers, Commander in Chief.—Two of them were separated from the Fleet before the Action of the 27th July.

	Guns.		Guns.
La Bretagne,	110	Le Dauphine Royal,	74
La Couronne,	80	L' Artésien,	64
Le St. Esprit,	80	Le Bien Aimé,	74
Le Ville de Paris,	90	Le Solitaire,	64
Le Duc de Bourgogne,	80	Le St. Michel,	64
Le Robuste,	74	L' Alexandre,	64
L' Orient,	74	Le Vangeur,	64
Le Glorieux,	74	L' Actionnaire,	64
Le Conquérant,	74	L' Indien,	64
Le Fendant,	74	Le Réfléchi,	64
Le Magnifique,	74	Le Rolland,	64
Le Palmier,	74	Le Sphinx,	64
L' Intrépide,	74	L' Amphien,	50
L' Aétif,	74	L' Eveillé,	64
Le Zodiac,	74	Le Triton,	64
Le Diademe,	74	Le Fier,	50

F I N I S.



